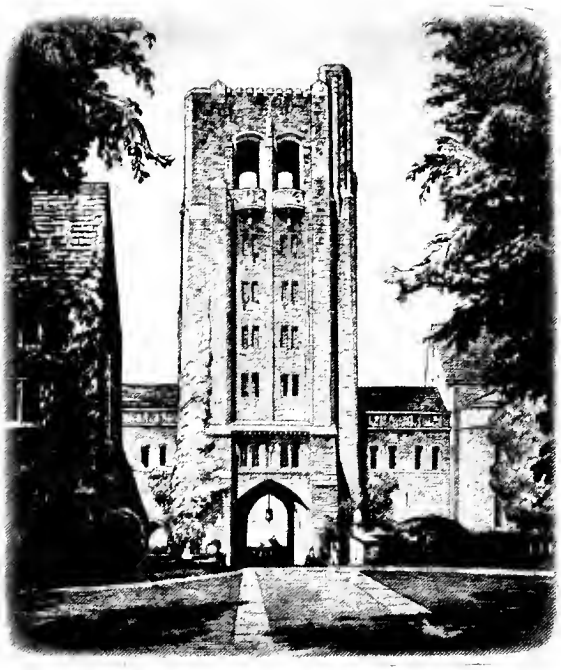

# CRIMINAL

# PLEADING AND PRACTICE,

WITH

## PRECEDENTS OF INDICTMENTS,

## AND SPECIAL PLEAS,

AND AN

APPENDIX OF SPECIAL PLEADINGS AND PRACTICAL SUGGESTIONS.

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# DEDICATION.

TO THE

Hon. SIDNEY BREESE,

CHIEF-JUSTICE OF THE

SUPREME COURT OF THE STATE OF ILLINOIS.

AS AN EXPRESSION

OF THE

GREAT RESPECT THE AUTHOR BEARS TO THE

EMINENT GENIUS, TALENT AND LEARNING OF THE GREAT JURIST, NOW CHIEF-JUSTICE

OF THE

SUPREME COURT OF THE STATE OF ILLINOIS,

WHOSE GENIUS AND LEARNING HAVE ILLUSTRATED

AND

ILLUMINATED THE JURISPRUDENCE OF ILLINOIS

FOR NEARLY HALF A CENTURY,

THIS LITTLE WORK IS MOST REPECTFULLY INSCRIBED

BY THE AUTHOR.

# PREFACE.

THIS is an American work meeting an American want. Though in part drawn from foreign sources, its idea is, presentation to the profession of a brief but reliable book on criminal pleading and practice, which will obviate the necessity of adapting English precedents to American criminal law on the one hand, and on the other hand prevent the labor of adapting precedents of other States, only partially American, to our criminal law. The utility and necessity of such a work is clear to practitioners; and, though there are a great number of valuable works on criminal law in the hands of the profession, yet there is no work of this kind before it, as far as the author can learn.

PART I is a condensed, yet sufficiently full, view of what is requisite in *Criminal Pleading and Practice in the Circuit Courts*, for preparing indictments, informations and special pleas, and of conducting a criminal proceeding through all its stages.

PART II contains one or more precedents for every indictable offense known to American criminal law, taking the Criminal Code of Illinois as a basis. These precedents are given in the order of the Code. Each head of crime or misdemeanor is preceded with full references to decisions thereon in the Illinois Reports to volume forty-two inclusive, to the United States' Reports, and those of the States, also English Reports; again, all legislation on criminal law up to 1869 is included, thus giving the whole law on each head to the day of publication.

PART III embraces precedents of all kind of special pleas, with practical suggestions thereon.

An appendix of valuable but not easily accessible special indictments and pleas is given; and a carefully prepared table

This work contains nothing purely theoretical,—it presents the decisions under each head, the limitation by statute, and the penalty; while it is concise, it is full; and, though based on the Illinois Code, *as in the work of Train and Heard* on the Massachusetts Code, yet it is adapted to every State of the Union.

The author would suggest, that, if for any particular offense the pleader is not able to find a precedent, by referring to the statute creating the offense, and carefully considering its operative words, he can readily adapt one of the precedents given to the case required; and this difficulty is as far as possible obviated by noticing all criminal legislation to the day of going to the press.

All obsolete allegations and phrases are, as far as possible, excluded; some few, and but very few, however, are occasionally used. These allegations and phrases are from habit continued in the books, though it has been long settled that they are not necessary,—they are incumbrances, and should be omitted. Good pleaders will exclude them.

Every available work on criminal law, both English and American, has been consulted, and freely used and acknowledged,—if not acknowledged it is by inadvertence.

The author now leaves the work to the profession, who he knows will treat it as it deserves, but yet will, he hopes, receive it kindly as an attempt to lighten their toil.

Richview, Illinois, Dec., 1869.

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# BASSETT'S CRIMINAL PLEADING AND PRACTICE.

## PART I. OF PLEADING AND PRACTICE.

### CHAPTER I. Of the Indictment.

*Section* 1. *What it is.*

An indictment is a written accusation of one or more persons of a crime, preferred to, and presented upon oath by, a grand jury.[1] It is the most constitutional and usual course for bringing offenders to justice on criminal charges.[2] This accusation is preferred in the name of the sovereign authority in the State — that is, the people — to a grand jury, competent by law to find it, and is found by that body on their oaths. When preferred to the grand jury it is called a bill, and when found by them, and not until then, is it an indictment. It is generally prepared by the prosecuting officer, from the evidence taken by the grand jury, or otherwise presented to them.[3]

Its object is *two-fold*, *first*, to inform the jury of the nature of the accusation they are to try; *second*, to inform the accused of the charge which he is called upon to answer. It should be in simple, yet technical language — technical in view of the statute creating the offense; hence section 162 of the Criminal Code of this State provides, "that every indictment or accusation of the grand jury shall be deemed sufficiently technical and correct, which states the offense in the terms and language of this Code, or so plainly that the nature of the offense may be easily understood by the jury."[4] This provision does away with the old technical and inverted phraseology, as well as the old multiplication of counts in indictments, both which tended to frustrate justice, though designed with the opposite intent. Proceedings under the indictment are further simplified by

[1] Arch. Cr. Pl. 1. [2] Broom Comm. Com. Law, 991.
[3] Broom Comm. Com. Law, 992. [4] R. S. 1845, ch. 30, § 162.

the provision of the Criminal Code, that all exceptions which go merely to matter of form in the indictment, shall be made before trial, and that motions in arrest of judgment, or writ of error, must be matter affecting the real merits of the offense charged in the indictment.[1]

*Section* 2. *When an indictment lies.*

Generally speaking, an indictment lies for all treasons and felonies — misprisions of treason and of felony — and for all misdemeanors of a public nature both statutory and at common law, except such misdemeanors of a public nature, which by the Code or by the statute are specially made matter of cognizance and determination by justices of the peace; these are, however, lesser misdemeanors. It lies for all breaches of public duty, for willful negligence endangering human life, for illegal combinations, and for public nuisances. The act, not the intent, is indictable; but where the intent appears by any overt act, the party may be indicted for an attempt to commit the offense.[2] Our Criminal Code defines a crime or misdemeanor to be "a violation of public law."[3] The word "crime," as popularly understood, conveys the idea of something done in violation of law, which exposes the offender to some sort of punishment, but this idea is incorrect; the law must be of a public nature — that is, all such acts or attempts as tend to the prejudice of the community.[4] Hawkins says: "There can be no doubt, but that all capital crimes whatever, and also all kinds of inferior crimes of a public nature, as *misprisions*, and all other contempts, all disturbances of the peace, all oppressions, and all other *misdemeanors* whatever of a public evil example against the common law, may be indicted; but no injuries of a private nature, unless they some way concern the King" (people). "Also," he further says, "it seems to be a good general ground, that wherever a statute prohibits a matter of public grievance to the liberties and security of a subject (citizen), or commands a public convenience, as the repairing of the common streets of a town, an offender against such statute is punishable, not only at the suit of the party aggrieved,

[1] R. S. 1845, ch. 30, § 163. [2] Arch. Cr. Pl. 1. [3] R. S. 1845, ch. 30, § 1.
[4] 2 East. 21.

but also by way of indictment for his contempt of the statute, unless such method of proceeding by indictment do manifestly appear to be excluded by it." [1]

It is proper here to explain the words "*misprisions*" and "*misdemeanors*" used in the above quotations. A *misprision* "properly signifies neglect or contempt;" but in law is applied more particularly "when one knows of any treason or felony and conceals it. In its larger sense, misprision is used to signify every considerable misdemeanor, which has not a certain name given to it by the law." [2] As to *misdemeanors*, more must be said. In England crimes are of three classes, "*treasons, felonies and misdemeanors.*" The Criminal Code of Illinois gives only two classes, crimes and misdemeanors, treason being included under the head of crimes.[3] In England, felony is intermediate between treason and misdemeanors, treason being a higher kind of felony, but felony is distinguishable from both treason and misdemeanor. Treason has for its prominent feature, violation of allegiance, felony sprang from feudal relations, and as its incident carries forfeiture of the offender's property, real or personal, or both. The distinction between felony and misdemeanors is arbitrary, and depends more on the consequences following conviction, than from any particular element or ingredient appearing in it; the consequence of felony has been noticed as being forfeiture of the offender's property, real or personal, or both. The term "misdemeanor" applies to all crimes of an inferior degree, which do not fall under the head of either treason or felony, and is any offense in the scale of crime lower than felony, the line of distinction being, as above stated, arbitrary. The question, whether a particular act is a felony or a misdemeanor, is one for the court to decide; and the court must, when called on to decide, declare affirmatively whether the offense constituted by the acts proved be, in truth, a felony or a misdemeanor.[4] From the Criminal Code of Illinois, it would seem, that a crime and a felony are synonymous terms, and that a felony is a crime which, in its consequences, is either capital punishment or imprisonment in the State penitentiary; and that for misdemeanors, except some of

[1] Hawkins' Pl. Cr. bk. 2, c. 25, § 4. [2] Broom Comm. Com. L. 867, n. (p.)
[3] R. S. 1845, c. 30, § 1, and §§ 19, 20, 21. [4] Broom Comm. Com. L. 892.

those offenses in the Code termed "high misdemeanors," the punishment is by imprisonment in the county jail, or a fine, or both. Thus the consequences distinguish between crimes and misdemeanors.

It frequently happens that there is difficulty to distinguish between indictable offenses and wrongs (torts) remediable by civil action. The case of *Rex* v. *Wheatley*,[1] will be useful to guide in this difficulty.

The meaning of the word "intention" in criminal law is most material. "The intention to do the act exists, for all criminal purposes, where it is willfully done, although the act itself was merely intended as a means of obtaining some ulterior object." This wrong intent is inferred from the overt acts, for it is an universal principle of law, that, "where a man is charged with doing an act of which the probable consequences may be highly injurious, the intention is an inference of law resulting from doing the act."[2] But mere intention, however criminal, is not indictable, there must be some overt act done, which, coupled with a willful disposition or culpable negligence, is essential to fill out the legal conception of a crime.[3]

*Section* 3. *Where an indictment does not lie.*

An indictment will not lie, we have seen from Hawkins, for a mere private injury against an individual; such injuries are remediable by civil action, unless they concern the people, or amount to a breach of the peace. Nor will an indictment lie for infringing private rights, though regulated by a public statute, nor will it lie for mere breach of the by-laws or customs of a corporation.[4]

*Section* 4. *Against whom an indictment lies.*

An indictment lies against all persons who actually commit, or who procure or assist in the commission of crimes, or who knowingly harbor an offender. The capacity of committing crime, presumes an act of the understanding, and an exercise of will. Our Criminal Code says, there must "in the commission of a crime or misdemeanor, be a union or joint operation

[1] 2 Burr. 1125, and Broom Comm. Com. Law, 868.
[2] *Rex* v. *Dixon*, 3 M. & S. 15; Broom Comm. Com. L. 874, and cases cited.
[3] Broom Comm. Com. L. 875. [4] Arch. Cr. Pl. 3, and cases cited.

of act and intention, or criminal negligence,"[1] and hence it is that the law defines what persons and actions are privileged or exempted from its penalties, in respect of their incapacities or defects, whether natural, affected, accidental, or in respect of civil subjection; each of these will be noticed.

The doctrine of intention has been noticed above; it is mentioned in the above quotation from the Criminal Code. We may state here, that, under said section 1 of our Criminal Code, it has been held, that an act apparently lawful becomes unlawful when done with a felonious intent.[2] This is the doctrine of Lord Mansfield.[3] It has been also held, that an intent which can be excused or justified cannot be felonious, and one fact cannot be conclusive proof of another fact, and that other fact be at the same time capable of disproof.[4] Our Criminal Code provides, that "intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused."[5]

Generally speaking, as to persons, those liable to indictment are principals of the first and second degree, that is participators or those aiding and abetting the crime. These are accessories before the fact, and are considered principals.[6] Accessories after the fact are not considered principals, but are indictable as such accessories after the fact.[7] As to corporations aggregate they may be indicted by their corporate name, for breaches of duty.[8] As to soundness of mind our Criminal Code provides that "a person shall be considered of sound mind, who is neither an idiot nor lunatic, nor affected with insanity; and who hath arrived at the age of fourteen years, or before that age if such person know the distinction between good and evil."[9]

Those exempt from indictment are infants under ten years of age,[10] lunatics or insane persons without lucid intervals, provided, the act so charged shall have been committed in the condition of insanity;[11] idiots are also exempt;[12] but, as to these persons, it is provided that any person counseling, advising, or encouraging an infant under ten years of age, a lunatic, or idiot,

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[1] R. S. 1845, ch. 30, § 1. [2] *Fairlee* v. *People*, 11 Ill. 1.
[3] *Rex* v. *Scofield*, Cald. 379. [4] *Armstrong* v. *People*, 38 Ill. 513.
[5] R. S. 1845, ch. 30, § 2. [6] Id. § 13. [7] Id. § 14.
[8] Arch. Cr. Pl. 4. [9] R. S. 1845, ch. 30, § 3. [10] Id. § 4. [11] Id. § 5. [12] Id. § 6.

to commit any offense, is liable to indictment as principal for such offense, and, if found guilty, punishable the same as if there was no intervention of such infant, lunatic, or idiot.[1] Married women acting under the threats, command or coercion of their husbands, are not punishable for any crime or misdemeanor not punishable capitally, if it appears from all the facts and circumstances, that violent threats, command or coercion were used; in such case the husband is treated as principal, and receives the punishment which the wife, if found guilty, would have gotten.[2] It must be remarked here, that this exemption of the wife does not extend to capital offenses, and further, it does not extend to the wife under special circumstances, as where the husband is a cripple or bedridden,[3] or where she commits a felony or other crime in the absence of her husband, though by his command.[4]

Drunkenness is no excuse for a crime or misdemeanor, unless the drunkenness be occasioned by the fraud, contrivance or force of some person, or persons, for the purpose of causing such offense to be done; in that case, the party or parties so causing the drunkenness are indictable for such offense as principal or principals. Drunkenness is neither an excuse nor aggravation of the crime. Hence, a drunken man may commit manslaughter, but there must be the same provocation as if perpetrated by a sober man.[5] Habitual drunkenness, though not an excuse, may induce insanity, which will render the individual affected by it, wholly irresponsible for his acts.[6] On this subject of drunkenness are several decisions which we cannot notice.[7]

Acts committed by misfortune or accident are not criminal, where it satisfactorily appears that there was no evil design, or intention, or culpable negligence.[8]

Threats or menaces sufficient to show danger to life or limb, or where the party had reasonable cause to believe, and did believe, such danger, these being proved, excuse, but the person so threatening is considered principal, and indictable for such offense so committed.[9]

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[1] R. S. 1845, ch. 30, § 7. [2] Id. § 8. [3] *Reg* v. *Cruse*, 8 Car. & P. 553.
[4] 1 Hale P. C. 45; *Rex* v. *Morris*, Russ. & Ry. 270.
[5] *McIntire* v. *People*, 38 Ill. 514. [6] *U. S.* v. *McGlue*, 1 Curtis, 1.
[7] *Rex* v. *Thomas*, 7 Car. & P. 820; and see Broom Comm. 886, 887.
[8] R. S. 1845, ch. 30, § 10. [9] Id. § 11.

A person becoming a lunatic or insane after the commission of the crime, is not to be tried while such lunacy or insanity continues. Where, after verdict and before judgment rendered, the party becomes insane or lunatic, if the punishment be capital, execution is stayed until recovery. In these cases the court shall impanel a jury to try the insanity at the time of impaneling.[1]

The case of *Reg.* v. *McNaghten*,[2] is a leading case in the law respecting alleged crimes committed by persons afflicted with insane delusions, and goes far to give a precise and definite rule as to the liability of insane persons to answer an indictment. It may be remarked that in no case does ignorance of the law excuse.

### *Section* 5. *Form of an indictment.*

An indictment consists of three principal parts, they are—the commencement, the statement, and the conclusion.

The *caption*, though it precedes the commencement of an indictment, is no part of the indictment; it is merely the style of the court where the indictment was preferred, and is a kind of preamble to the indictment upon the record.[3] It has been held, that the caption is not a count, nor a part of a count, and where a motion to quash was sustained as to one count, and overruled as to the other, the caption was not affected.[4] The form of the caption is as follows. When in the Circuit Court, *it is:* "In the Circuit Court of —— county, of the —— Term, A. D. ——." In inferior courts of criminal jurisdiction, it is as follows: "In the Superior Court (or Court of Common Pleas) of the city of ——, of the —— Term, A. D. ——." Observe, however, that the year is not put in figures, but is generally written at length; but this is not essential.

### (*a*) *The Commencement.*

Our Criminal Code prescribes the form;[5] it is as follows:

"State of Illinois, —— County. } ss. Of the —— Term of the Circuit Court, in the year of our Lord 18—.

"The grand jurors chosen, selected and sworn, in and for the county of ——, in the name, and by the authority of the

[1] R. S. 1845, ch. 30, § 12. [2] 10 Cl. & Fin. 200, and see Arch. Cr. Pl. 14, 15.
[3] Arch. Cr. Pl. 19. [4] *Duncan* v. *People*, 1 Scam. 456. [5] R. S. 1845, ch. 30, § 162.

people of the State of Illinois, upon their oaths present." As the English books of precedents are much used here, the usual commencement there is given, as follows, for example: "Middlesex, to wit, the jurors for our lady the Queen, upon their oaths present, that," etc.

As to the commencement, there are certain essentials, which it must contain under our Criminal Code.—It must be averred to be *the year of our Lord.*[1]—It must contain the words: "In the name, and by the authority, of the people of the State of Illinois."[2] It must show a presentment on oath.[3] The omission to state this is not fatal; it has been held to be matter of form only, and cannot be assigned for error.[4]

It must appear from the commencement, that the grand jurors were of the county where the indictment was found; this is shown by the words "of the county aforesaid." It has been held, that, where there are two counts in an indictment, and the first count is stricken out, the commencement which recites the choosing, selecting and swearing of the grand jury, according to the forms of law, still remains, and the second count, though incomplete in itself, will relate to the original commencement, and be sustained.[5]

The venue in the margin is important; the general rule is, that the venue should be the county in which the offense was committed.[6] It should be co-extensive with the jurisdiction of the court — that is, it should be descriptive of the limit of the jurisdiction of the court, and the offense must have been committed within that limit. So, as the limit of jurisdiction of the Circuit Court is the county, the venue in that court is laid thus: "State of Illinois, —— county," thus embracing the whole county. In an inferior court of criminal jurisdiction, for example the Recorder's Court of the city of Chicago, the venue should be laid thus: "State of Illinois, Cook county, City of Chicago." The city of Chicago being the territorial limit of the jurisdiction of that court, the above defines that limit.

The indictment can only be found in the county in which the

[1] *Whitesides* v. *People*, Bre. 4. [2] Id. [3] *Duncan* v. *People*, 1 Scam. 456.
[4] *Curtis* v. *People*, Bre. 197.
[5] *Whitesides* v. *People*, Bre. 4. [6] 2 Hale P. C. 160.

offense was committed, and the trial must be had in the same county, unless the venue be changed, as required by statute.

In courts whose jurisdiction is limited by the city boundaries, as the Recorder's Court of Chicago, no indictment can be found, or trial had, unless the offense was committed within the city.

Upon complaint made before a justice of the peace, in any county, that an offense has been committed in this State, etc., the judge or justice shall issue his warrant, etc., and on examination, commit the offender to jail, or take bail conditioned for the appearance of the accused before the Circuit Court of the county in which the offense was committed, on the first day of the next term thereafter.

Upon the finding of an indictment, capias may be issued to any county.

### (*b*) *The Statement.*

This part of the indictment commences with the word "that" immediately after the closing word of the commencement "present." This is the part of the indictment referred to in section 162 of our Code in these words: "(here insert the offense, and time and place of committing the same, with reasonable certainty.)" It is that part referred to by same section, thus: "Every indictment or accusation of the grand jury shall be deemed sufficiently technical and correct, which states the offense in the terms and language of this Code, or so plainly that the nature of the offense may be easily understood by the jury."[1]

In this part of the indictment, the essential requisites are, that all the ingredients of the offense with which the accused is charged, the *facts* and *circumstances*, and *intent*, constituting it, must be set forth, with *certainty* and precision, without any *repugnancy* or inconsistency, and the defendant must be charged *directly* and *positively* with having committed it. *Certainty* is therefore important. *It must be certain as to the party indicted.* The full name of the accused must be given. In England this rule applies to the baptismal and confirmation names: this arises from an established State church, and there, as to these names, great accuracy is required. In this country this rule does not apply, there being no State church, yet if the baptismal name be known it must be stated, if he goes by that name.

[1] R. S. 1845, ch. 30, § 162.

The rule here is, the usual name he is known by will suffice. Initials are not sufficient, but if the defendant uses initials for his christian or given name, he may be so indicated. The christian and surname must be given; the middle name may be omitted; if given when denied by plea in abatement, it must be proved as given; the failure so to prove is fatal. As to *alias dictus*, the rule as to the christian name is, that he can have but one christian name, he cannot be named John *alias* James,[1] he may be named John James, which is one name. An *alias dictus* as to the surname may be had, as "Richard Wilson, otherwise called Richard Layer."[2] If the name be unknown, and the accused refuses to disclose it, he may be indicted as a person whose name is to the grand jurors unknown. Our Criminal Code dispenses with the addition — that is, the "estate or degree, or mystery" of the accused.[3] The omission of the place of residence of the accused is not ground to quash the indictment; if it is known, he may be described of it, according to the truth; if unknown, it is usual to describe him of any place in the county where the offense is committed. The addition of "the younger" or "elder," to his name, for purpose of clearer identification, is correct.[4] If the defendant plead over, he waives all objections on the above matters.

The statement *must be certain as to the person against whom the offense was committed.* The christian and surname must be given, if known; it must be either the real name, or that by which he is usually known.[5] Initials are not sufficient, and in larceny, this is good in arrest of judgment.[6] In stealing the property of a deceased person, after death, the indictment must state it to be the goods and chattels of the executor or administrator.[7] The certainty required is that to a common intent only, and the usual name is sufficient; where they are partners, the partnership name need not be stated.[8]

The statement *must be certain as to time and place.* These are usually alleged thus: "That J. S., of ——, etc., on

[1] Hale Pl. Cr. 175. [2] Arch. Cr. Pl. 28. [3] R. S. 1845, ch. 30, § 163.
[4] 2 Hawk. ch. 23, § 106. [5] *Rex* v. *Norton*, R. & R. 510.
[6] *Willis* v. *The People*, 1 Scam. 400. [7] Arch. Cr. Pl. 32.
[8] *Durham* v. *The People*, 4 Scam. 172.

the —— day of ——, in the year of our Lord ——, at C., in the county of C." or, "in the county aforesaid." The place is sometimes called the *special venue.* Time and place must be added to every material fact in an indictment; that is, every material fact in an indictment must be alleged to have been done on a particular day, and at a particular place. As to what are material facts, we may remark, that every offense consists of the doing, or omitting to do, certain acts, under certain circumstances, and each of these, being necessary ingredients in the offense, is material and must be stated. This remark applies to misdemeanors as well as to felonies; but mere circumstances accompanying these acts, need not be laid with time and place; for instance, in bigamy, in averring the first wife was alive at the time of the second marriage, it is not necessary to allege a *place* where, though from the nature of the offense, the *time* must necessarily be stated. The time laid should be the day of the month and year on which the act is supposed to have been committed; a day certain must be stated; the year must also be stated, and it must be the year of our Lord, or it is error;[1] the hour need not be stated unless the statute require it. After the first statement, the words "then" and "there" indicate time and place. The time averred may be any day previous to finding the bill, but within the time the offense may be prosecuted.[2] "Then" and "there" is good if only one time be given, but where two are given, it is defective for uncertainty; there must, in that case, be clear reference to the respective times.[3] In murder, the death should be laid on a day within a year and a day from the time the mortal stroke is supposed to have been given.[4]

The statement *must be certain as to the facts, circumstances and intent, constituting the offense.* Our Criminal Code, section 162, prescribes what shall in an indictment be deemed sufficiently correct and technical. The offense must be stated so as to be made judicially to appear;[5] it must be technically exact as to sex. A conclusion of law is not enough to charge an offense; the indictment must charge the specific offense, so as not to leave it uncertain; if it state it to be murder, or cause

[1] *Whitesides* v. *The People*, Bre. 4. [2] Whart. § 261. [3] Id. § 272.
[4] Arch. Cr. Pl. 41. [5] *Connolly* v. *People*, 3 Scam. 474.

to be murdered, it is bad, because in the disjunctive, it should have been in the conjunctive.[1] When an instrument is set out in full, literal exactness is required, the pleader should be careful to use the words "according to the tenor following," or, "of the tenor following," or, "in the words and figures following," these phrases imply that a correct recital is necessary; on the other hand, when the substance only is intended to be given, the pleader should use the words "in substance as follows," or "to the effect following." The word "tenor" implies correctness. "Money" will not cover bank notes, nor promissory notes, nor treasury warrants. When pleading a statutable offense, the best mode is to use the words of the statute,[2] and the statutory language must be followed; verbal or grammatical inaccuracies not affecting the sense are not fatal. The word "feloniously" is essential to all indictments for felony, but the words "with force and arms" are not necessary.

It has been stated above, that there must be a specific description of the offense; a general charge of commission of crime will not suffice, as, that he murdered J. S., or stole the goods of J. N.; all the facts and circumstances constituting the offense must appear, so that the indictment on its face shall show a distinct substantive offense. A man cannot be charged as a common theif, but if he have committed a larceny the indictment must set forth every fact and circumstance which is a necessary ingredient in the offense. The case of a "common barrator" is an exception to the general rule. The omission of any fact or circumstance which is a necessary ingredient in the offense, vitiates the indictment, and may be availed of by the accused in arrest of judgment, or writ of error. Thus, an indictment for assaulting an officer in the execution of process, without showing he was an officer of the court out of which the process issued, is bad.[3]

Every fact and circumstance in an indictment, not a necessary ingredient, may be rejected as a superfluous averment and need not be proved.[4] All these facts and circumstances must be stated with such certainty and precision, that the

[1] Whart. § 294. [2] *Miller* v. *People*, 2 Scam. 233; *Quigley* v. *People*, id. 201; *Jones* v. *People*, id. 477. [3] Arch. Cr. Pl. 42. [4] *Durham* v. *People*, 4 Scam. 172.

accused may be able to judge whether they constitute an offense, so that he may plead, and that there be no doubt as to the judgment, if convicted.[1] Where all the allegations can be admitted without necessarily showing the accused to be guilty, it is bad.[2] The certainty required is "reasonable" or common certainty;[3] yet certainty to a certain intent, where attainable, will not be dispensed with.[4] Nothing can be inferred.[5] Mere matter of inducement does not require so much certainty as the statement of the gist of the offense; where the offense cannot be stated with complete certainty, state with such certainty as it is capable. In larceny the prosecutor is bound by the description of the species of goods he states. Money is described as so many pieces of current gold or silver coin. The species of coin must be specified.[6]

The technical words essential to the offense must be stated; as in perjury "willful and corrupt," "willfully and maliciously" in arson, "steal, take and carry away" in larceny.[7] The intention of the offender, at the time of committing the offense, is often a necesssary ingredient of the offense; in such cases, it is necessary to state that intention. Where the intent is charged as felonious, the indictment need not aver that the act was felonious.[8] The law in some cases has given certain technical expressions to indicate the intention; in such cases, the technical word and words presented, and no other, must be used, as "traitorously" expresses the intent in treason, "feloniously" in all felonies. Burglary is expressed by "willfully and maliciously." Murder by "feloniously of his (*or her*) malice aforethought." The word "feloniously," where the offense is made felony by the statute, and with intent to defraud, etc.

If there be an exception contained in the same clause of the statute which creates the offense, the indictment must show negatively, or the subject of the indictment, that the accused does not come within the exception;[9] but if the exception be in a subsequent clause, it is matter of defense, and need not be

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[1] Arch. Cr. Pl. 43. [2] *Cantrel* v. *People*, 3 Gilm. 356.
[3] Crim. Code, § 162; *Whitesides* v. *People*, Bre. 4.
[4] *Willis* v. *People*, 1 Scam. 399. [5] Bre. 4. [6] Arch. Cr. Pl. 49.
[7] 4 Bl. Com. 395. [8] *Fairlee* v. *The People*, 14 Ill. 1.
[9] *Lequot* v. *The People*, 11 Ill. 330.

negatived in the indictment;[1] or, although in the same section, yet if it be not incorporated with the enacting clause by any words of reference,[2] it is then matter of defense, and need not be negatived in the indictment.

The indictment must be in words at length; no figures are allowed, except where a *fac simile* of an instrument is to be set out, as was formerly the case in forgery. It must be in English; if a document be in a foreign language, set it out in that language, and then set out a translation; yet this latter is needless, and is often dangerous.

*Duplicity.*— The statement *must not be double.* It cannot charge two or more offenses in one count, as where a supervisor was charged in one count, that he failed to open a road, and to put up guide boards, there should be two distinct counts, the offenses being distinct.[3] Burglary may be charged in one count, with intent to steal, or commit other felony, and in another count the commission of the larceny or other felony. The burglary and other felony must be parts of one transaction. An assault with intent to murder, and with intent to commit a bodily injury may be charged in same indictment, but must be separate counts. Duplicity is best met on motion to quash; it is very doubtful whether it can be made subject of motion in arrest of judgment or writ of error.

The statement *must be positive;* this has been noticed before; it must directly affirm that the accused committed the act, it cannot be stated by recital, as "that whereas." Argument or inference are fatal;[4] this rule applies to the inducement, though in one case the contrary was held.[5] A defect in this particular is not cured by verdict; hence motion in arrest of judgment, or for writ of error, will lie.[6]

*Repugnancy.*— The statement *must not be repugnant.* Where a material part of the indictment is repugnant to another, the whole is void; as where it is alleged that the defendant forged a bond, by which J. S. was bound. If the repugnancy be immaterial, it may in general be rejected as surplusage, especially after verdict. It is a general rule, that an allegation in plead-

[1] Arch. Cr. Pl. 52. [2] *Steel* v. *Smith,* 1 B. & Ald. 94.
[3] *Lequot* v. *The People,* 11 Ill. 330. [4] *Whiteside* v. *People,* Bre. 4.
[5] *Rex* v. *Goddard,* 3 Salk. 171. [6] Arch. Cr. Pl. 54.

ing, which is sensible and consistent in the place where it occurs, and not repugnant to antecedent matter, cannot be rejected as surplusage, though laid under a *videlicet*, however, inconsistent it may be with an allegation subsequent.[1] It seems that an indictment would be good, if it called a contract by the wrong name, and set it forth verbatim.[2]

*How averments are made.* — The usual way is, especially in England, "*And the jurors aforesaid, upon their oaths aforesaid, do further present.*" Or if connected with that immediately preceding, simply, "and that, etc.," then state the matter of the averment; where it is a mere adjunct it need not be technically stated, thus — "*that A being an officer, etc.*," sufficiently avers that A was an officer. "That A, knowing that B was indicted for forgery, concealed a witness against him," is a sufficient averment that B was indicted; so, where an indictment for perjury stated, that, "at and upon the hearing of the said complaint" "the defendant deposed," etc., it was held sufficient to show, that the complaint was heard.[3] Averments are made under our Criminal Code as stated below.

Where an offense is created by the statute, it is sufficient to charge same in the words of the statute,[4] the indictment should show a violation of law, and enable the accused to meet the charge; mere specification might furnish a means of evading the law.[5]

The commencement of a second or any subsequent count, is in form as follows, in England: "And the jurors aforesaid, upon their oaths aforesaid, do further present, that," etc., and so proceed to state the offense. It has been held, that where the second count in an indictment, the *first* having been quashed, because it did not state the presentment to be on oath, recited that "the grand jurors *aforesaid*, chosen, selected and sworn *as aforesaid*, in the name and by the authority of the people of the State of Illinois, *aforesaid*, on their oaths *aforesaid*, do further present," — the count is sufficient; the use of the word "aforesaid" does not vitiate.[6] This is the form generally used in Illinois in making averments, and commencing the second and subsequent counts.

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[1] *Rex* v. *Stevens*, 5 East, 244. [2] *Bland* v. *People*, 3 Scam. 364.
[3] Arch. Cr. Pl. 55. [4] *Miller* v. *People*, 2 Scam. 233.
[5] *Cannady* v. *People*, 17 Ill. 158. [6] *Duncan* v. *People*, 1 Scam. 456.

(c) *Conclusion.*

The Constitution of the State of Illinois provides, that all prosecutions shall conclude "against the peace and dignity of the people of the State of Illinois."[1] Hence, every indictment must so conclude. There are other conclusions which may also be used, as indictments for nuisances usually conclude thus — "to the great damage and common nuisance of all the citizens of said State;" this conclusion, though usual, is not essential. In cases of *non-feasance* the only conclusion is that of *contra pacem*, given above. For an offense created by statute, the conclusion is as follows: "Against the form of the statute in such case made and provided." Then follows the conclusion, *contra pacem.* This rule applies not only where the statute creates the offense, but also where it makes a common law offense, to be one of a higher grade. Indictments for murder, manslaughter, robbery, burglary, housebreaking, stealing in a dwelling-house and the like, should conclude against the statute. The omission to conclude against the form of the statute, etc., where it is required, is error. Where an indictment should conclude "*contra pacem*" only, and it also conclude against the statute, the latter will be deemed surplusage only. It is perhaps needless to remark, that an indictment concluding contrary to the statute, will not supply that of *contra pacem*, the latter is essential and cannot be aided or supplied by any other conclusion.

*Section* 6. *Joinder of defendants.*

Where several persons join in the commission of an offense, all, or any number of them, may be jointly indicted for it, or they may be severally convicted. So, in robbery, burglary, or murder.[2] And though they have acted separately, yet if the grievance is the result of the acts of all jointly, all may be indicted jointly. Acting in concert in obtaining money by false pretenses, holds all to liability to indictment jointly. Principal and accessories before the fact, are all principals, and may be indicted jointly, and it seems that an accessory after the fact may not be joined with them, or the principal may be

[1] Const. 1848, art. 5, § 26; *Zuriseller* v. *People*, 17 Ill. 104.

[2] Hale Pl. Cr. 173; *Baxter* v. *People*, 3 Gilm. 382; *Brannan* v. *People*, 15 Ill. 511.

indicted first, and the accessory after, or before the conviction of the principal for a substantive offense.[1] The misjoinder of defendants is not good ground for quashing the indictment.[2]

*Section 7. Joinder of several offenses in different counts in one indictment.*

It has been shown that joinder of two different offenses in one count is bad for duplicity; charging different offenses in different counts is a different consideration. In treason, there may be different counts charging different overt acts. A defendant ought not to be charged with different felonies in different counts; as for instance, for murder in one count, burglary in the house of A in another count. If the objection be raised before plea, the court may quash the indictment, or, if not discovered until after the jury is charged, the court may put the prosecutor to his election, but in arrest of judgment it is no objection.[3] The application for a prosecutor to elect, is one to the discretion of the court. A count charging prisoners as principals in larceny, and another in same indictment charging them as receivers of stolen goods, is bad. A defendant may be charged as an accessory before the fact as principal in one count, and as an accessory after the fact in another, to the same felony, without putting the prosecutor to his election. The same felony may be charged in different counts in different ways, and separate offenses of the same nature may be joined against same defendant.[4]

*Section 8. Within what time the indictment must be found.*

This is the subject of division 17 of our Criminal Code. In this work, the limitation as to every offense is given. A synopsis of that division may be useful:

1. Treason, arson, murder and forgery have no limit.

2. All other felonies, must have the indictment found within three years next after the offense committed.

3. Misdemeanors and offenses below felony — fines and forfeitures under any penal statute, the limit is eighteen months from the commission of the offense, or incurring the forfeiture.

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[1] Arch. Cr. Pl. 58. [2] Id. [3] *O'Connell* v. *Reg.*, 11 Cla. & Fin. 155.
[4] *Curtis* v. *People*, Bre. 200.

The provisos are: 1. The limitation does not extend to any person fleeing from justice. 2. Special statutes giving special limitations are favored. 3. Quashing a proceeding on writ of error, the time pending such quashing or writ of error is not reckoned, so as to bar a new indictment, information or suit for the same offense.

In larceny, where the stolen goods do not exceed $20 in value, all indictments are barred after seven years from finding the indictment.[1]

There are several offenses in our Criminal Code deemed "high misdemeanors," such of them as have a penalty of confinement in the penitentiary are, it would seem, of three years' limitation; those where fine or imprisonment in the county jail is the penalty, are of eighteen months' limitation — to the former belong sections 43 and 59, R. S. 1845, ch. 30, also Laws of 1867, page 89, section 1. Abortion by instruments. To the latter class belongs section 52, R. S. 1845, ch. 30, also Laws of 1861, page 270, section 1. Throwing dead animals into watercourses, etc.

*Section* 9. *How an indictment is found.*

It has been stated that the indictment is a written accusation of a crime preferred to, and presented, that is found upon oath by a grand jury. The grand jury having been duly nominated and summoned, are on the opening of the court on the first day of term impaneled; the full number is twenty-three, but sixteen form a quorum, and are competent to act if such quorum be present; they are then sworn and charged on their duties by the court or State's attorney, a foreman is appointed by the court, and the grand jury thereupon proceed to consider presentments, having appointed one of their body as clerk.

The indictment or rather the accusation may be preferred by the State's attorney, any person aggrieved, or by a grand juror. The grand jury may, on being informed of the offense, proceed to take testimony, and this when taken, with a list of the witnesses' names, are handed to the State's attorney, who prepares the necessary indictment, and presents it to the foreman for final approval and indorsement — or the State's attor-

[1] Laws, 1859, p. 126.

ney may prepare it, indorse the witnesses' names thereon and present it to the foreman; the witnesses are called in the order of their names as indorsed, who are sworn or affirmed by the foreman, and examined by the grand jury, but witnesses for the prosecution only are called;[1] the grand jury have power to compel the attendance of witnesses. The grand jury then consider the case, if satisfied by good and sufficient evidence (one witness being sufficient, except in treason and perjury, where two are required,) that a crime or misdemeanor has been committed, and a quorum of the grand jury, that is sixteen being present, and if twelve of them concur, the bill is found a "*true bill.*" If twelve do not concur, sixteen being present, it is "*not a true bill.*" The foreman in the former case indorses on the back of the indictment "a true bill," and in the latter case "not a true bill;" he also indorses on the former the witnesses' names, and at foot of the indorsement signs his name as foreman, and in like manner the latter.

A bill may be presented to the grand jury on the information of two grand jurors, except in treason or perjury, when at least two witnesses to the same fact are neeessary. In this case sixteen jurors must be present, and twelve of them must concur to find the bill;[2] where the charge is preferred by two grand jurors, if one of them give the evidence and was sworn as a witness, and the evidence be sufficient, the indictment may be found thereon, as in case of evidence by another witness not of the grand jury; as to this kind of indictment, the rule as to indorsement obtains, and the indorsement by the foreman above stated is essential.

This indorsement is essential to every indictment; it has been held, that an indictment is a nullity, unless indorsed "a true bill," and it be signed by the foreman.[3] This indorsement and signature, it has been held, are the evidence of the finding of the jury; without them, the court should never permit an indictment to be entered on the record as a true bill, but the name of the foreman need not be copied into the record.[4] The names of the witnesses must be indorsed on the indictment. It seems that the words "a true bill" may be printed, but at

[1] R. S. 1845, ch. 30, § 187. [2] R. S. 1845, ch. 30, § 187.
[3] *Nomaque* v. *People*, Bre. 109. [4] *Gardner* v. *People*, 3 Scam. 83.

foot, the foreman must sign his name as foreman, or it is a nullity.

It is provided, that no bill of indictment for false imprisonment, or willful or malicious mischief, shall be found "a true bill" unless a prosecutor be indorsed thereon by the foreman of the grand jury, with consent of the prosecutor, except such indictment be found on the information and knowledge of two or more of the grand jury, or on the information of some public officer in the necessary discharge of his office; in which case, it shall be stated at the end of the indictment how the same was found, and then no prosecutor shall be required.[1] In stating the name of the prosecutor, his usual name is sufficient, without stating his residence or addition; certainty to a common intent only is required in this respect.[2]

When the indictment is thus found indorsed, whether as a true bill or not a true bill, and in the former case the State's attorney having signed the indictment at foot, it must be presented to the court. The foreman accompanied by the grand jury, comes into court, the court judicially sitting in *open court.* The clerk of the court calls their names; if sixteen be present, the court inquires if the grand jury have any presentments. The foreman then presents the indictment, or such indictments as have been passed upon, to the court, whether they be *true bills* or *not true bills.* The court enters them — that is, the true bills — on the record, and fixes the amount of bail, in bailable cases, stating it on the record. It is the duty of the clerk of the court to docket and file them. The record of the court must show the fact, that the grand jury returned the indictment into open court, as a "true bill," though the indictment itself be indorsed "a true bill," and though the foreman's name be indorsed thereon.[3] It is error to put the defendant on his trial on an indictment, unless it is so returned in open court, and the only evidence of the fact must be found in the record itself of the case; the indorsement on the back of the indictment is not evidence.[4]

We have seen, that the grand jury can only hear evidence for the prosecution, but they may require the same evidence,

[1] R. S. 1845, ch. 30, § 179. [2] *Gardner* v. *The People,* 3 Scam. 85. [3] Id.
[4] *Gardner* v. *The People,* 20 Ill. 432.

written or parol, as may be necessary to support the indictment at the trial. Generally the grand jury is not very strict as to documents, yet, it is better to have ready the same evidence intended to be used at the trial. The grand jury being at liberty to find the indictment on their own knowledge, an improper mode of swearing the witnesses before the grand jury will not vitiate the indictment.

It may be proper to state, that if an indictment be thrown out, it can be again preferred to the same grand jury, during the same term, it may be preferred and found at the next term, by another grand jury, if no time be limited for preferring it, or if the time limited has not elapsed.

*Section* 10. *When an indictment will be quashed.*

The proper time for motions to quash an indictment is before trial.[1] In former parts of this chapter, several special grounds for quashing an indictment are stated; in addition, we may state, that where the indictment is so defective, that no judgment can be given on it, even should the defendant be convicted, the court will, on application, quash it. So also, where all the allegations can be admitted without necessarily showing the defendant to be guilty, it is bad, and will be quashed.[2] There are several cases where indictments have been quashed, because the facts stated did not amount to an offense punishable by law;[3] for instance, where an indictment for contemptuous words spoken to a justice of the peace, did not state that they were spoken to him while executing his office.[4]

Where the alleged defect was, that the indictment did not conclude *contra formam statuti*, the court refused to quash.[5] The court will quash an indictment, where the recovery can only be had on a statutory offense, and there is no statute creating the offense, if it concludes contrary to the statute.[6] If any of the words used in the statute to characterize the offense are omitted, it is good ground to quash.

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[1] R. S. 1845. ch. 30, § 163; *Curtis* v. *People*, Bre. 197.

[2] *Cantrill* v. *People*, 3 Gilm. 356. [3] Arch. Cr. Pl. 64.

[4] *Rex* v. *Leafe*, Andr. 226. [5] *Rex* v. *Brotherton*, 1 Stra. 702.

[6] *Town of Paris* v. *People*, 27 Ill. 75.

*Section* 11. *Indictment, when and where tried.*

Felonies are generally tried at the same term as the indictment is preferred, and found by the grand jury, if the defendant be in custody, or on bail. The prosecution may have it postponed to the next term; so may the defendant, on sufficient cause shown by affidavit, as the absence of a material witness, or a prejudice on part of the judge, jury, or the like, when a change of the venue for trial is ordered.[1] When such application is made by the defendant the court remands him to custody, if the offense is not bailable; when bailable, he is admitted to bail. Misdemeanors follow the same course. Felonies and misdemeanors are tried within the jurisdiction where the offense is committed, or in which the statute lays the venue, and before the court in which the indictment is preferred — this is the general rule.[2] Where, by order of the court, the venue for trial is changed, the offense is tried in the county to which it is changed, and by the Circuit Court of such latter county.

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## CHAPTER II. OF DEFENDANT'S PLEAS.

Section 227, Criminal Code, Revised Statutes, 1845, provides, that, "Upon the arraignment of a prisoner, it shall be sufficient, without complying with any other form, to declare, orally, by himself or herself, or his or her counsel, that he or she is not guilty; which declaration or plea shall be immediately entered upon the minutes of the court by the clerk, and the mention of the arraignment and plea shall constitute the issue between the people of the State and the prisoner." Under this plea of "not guilty," the prosecution is required to prove all the material allegations in the indictment to authorize a verdict of guilty; also, the defendant under this plea may give in evidence any matter of excuse or justification, or any other new matter that would show him not guilty, as self-defense, insanity, former trial. A special plea in bar is not necessary. However, it appears that special pleas in bar may be pleaded.

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[1] Arch. Cr. Pl. 96. [2] Id. 68.

The usual pleas of the defendant are, in order: 1. Plea to the jurisdiction. 2. In abatement. 3. Demurrer. 4. Special plea in bar. 5. *Autrefois acquit.* 6. *Autrefois convict.*

1. The plea to the jurisdiction is seldom used, because it can be taken advantage of under the general issue of "not guilty." It must be certain in every particular.

2. Pleas in abatement; these are, *misnomer*, etc. Their danger has been noticed.

3. Demurrer. This pleading is seldom used, because the same advantage can be had under "not guilty," or in arrest of judgment or motion to quash.

4. Special pleas in bar. These seldom occur in practice, as all matters of excuse and justification may be given in evidence under the general issue.

5. *Autrefois acquit*, and 6, *Autrefois convict*, are used. The principle on which they depend is, that no man can be put in jeopardy twice for the same offense.

Should the defendant stand mute or refuse to plead, a plea of "not guilty" is entered by the court,[1] and the trial proceeds.

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## CHAPTER III. Of Prosecuting Officers, and Inferior Courts of Criminal Jurisdiction.

The prosecuting officers of this State are, the attorney-general, State's attorneys and prosecuting attorneys of inferior courts. Other counsel may aid at the trial.

The duties of the attorney-general are prescribed by the act creating the office;[2] those of State's attorneys are generally prescribed by the Revised Statutes of 1845;[3] those of prosecuting attorneys of inferior courts are prescribed by the several statutes creating those courts; these inferior courts are entirely distinct from other municipal courts created by the special charter of the town or city.

These inferior courts of criminal jurisdiction are:

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[1] R. S. 1845, ch. 30, § 182. [2] Laws 1867, p. 46. [3] R. S. 1845, ch. 12, §§ 4, 5.

1. The Superior Court of Chicago, which displaced the Cook County Court.[1]
2. The Recorder's Court of the city of Chicago.[2]
3. The Recorder's Court of the city of Peru.[3]
4. The Court of Common Pleas of the city of Elgin.[4]
5. The Court of Common Pleas of the city of Aurora.[5]
6. The Alton City Court.[6]
7. Court of Common Pleas of the city of Amboy.[7]
8. Court of Common Pleas of the city of Sparta.[8]
9. Rocorder's Court in the city of El Pasco.[9]

The Constitution of 1848 provides, that these inferior courts shall have uniform organization and jurisdiction in such cities.[10] This has been considered to mean, that where more than one such court is in a city, as in Chicago, their organization and jurisdiction must be the same.

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## CHAPTER IV. OF CRIMINAL JURISDICTION.

Under the Constitution of 1848, the judicial power of the State is vested in — First, the Supreme Court; second, in Circuit Courts; third, in County Courts; fourth, in justices of the peace; fifth, in inferior courts of local, civil and criminal jurisdiction.[11]

Of these courts and officers, the *Supreme Court* has, in criminal cases, appellate jurisdiction only, as to them it has no original jurisdiction.[12] The *Circuit Courts* are the chief, indeed, the only, tribunals having full original criminal jurisdiction in their respective counties, each county having such court. The circuit judge in criminal matters exercises the powers granted to the judges of assizes in England, under their commissions — First, of *oyer and terminer*, which gives power to deal with treasons, murders and all felonies and misdemeanors, not specially

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[1] Laws 1859, p. 84. [2] Id. 1853, p. 147. [3] Id. 1865, p. 42. [4] Id. 1857, p. 173.
[5] Id. 1859, p. 375. [6] Id. p. 71. [7] Id. 1869, p. 111. [8] Id. 120.
[9] Id. 125, Chicago Legal News Edition. [10] Const. 1848, art. 5, § 1. [11] Id.
[12] Id. art. 5, § 5.

conferred by statute on justices of the peace, as are common assaults and batteries; second, of *jail delivery*, this authorizes the trying unconvicted persons in jail. These commissions are regularly issued in England, but are not so here; our statute confers that power as to *oyer and terminer*,[1] and also as to *jail delivery*.[2] The Circuit Court has appellate jurisdiction of decisions of justices of the peace, and also of corporations for breaches of ordinances. *Justices of the peace*, as conservators of the peace, have jurisdiction of breaches of the peace, of preliminary examination of felonies and misdemeanors, and have sole jurisdiction, subject to appeal to the Circuit Court, of such offenses as are by statute specially conferred on them. They have concurrent jurisdiction with the Circuit Court, in misdemeanors where the fine is $100 or under.[3] The inferior courts in cities have criminal jurisdiction to the extent of the power granted by the statute creating the particular court, and to that extent is concurrent with the Circuit Court, and subject to the appellate jurisdiction of the Supreme Court. The County Courts have no criminal jurisdiction whatever.

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## CHAPTER V. Of a Criminal Trial, and its Incidents.

### *Section* 1. *Preliminary matters.*

The Criminal Code, section 163, provides that "all exceptions which go merely to the form of an indictment, shall be made before trial." It also provides, by section 180, that "every person charged with treason, murder or other felonious crime, shall be furnished, previous to his arraignment, with a copy of the indictment, and a list of the jurors and witnesses;" this provision is peremptory. In all other cases "the same section provides, that he or she shall, at his or her request, or the request of his or her counsel, be furnished with a copy of the indictment and a list of the jurors and witnesses." It is the duty of all justices of the peace to transmit to the clerk

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[1] R. S. 1845, ch. 29, p. 141, § 31. [2] Id. ch. 30, § 195. [3] Laws 1863, p. 54.

of the Circuit Court before the first day of the next term of the Circuit Court, after same be taken, all recognizances of persons charged with crimes or misdemeanors, and held to bail by them; also all recognizances of witnesses,[1] a similar duty is enjoined on all officers, such as sheriffs, coroners and constables, who have taken recognizances of bail of all persons arrested by them under process of *capias*, to transmit such recognizances to the clerk of the Circuit Court, by the first day of the term of the court, to which they are returnable.[2] It is also made the duty of circuit clerks to issue subpœnas, either on the part of the people, or of the accused, to any county of the State.[3]

It is clear that the object of each, and all of these provisions is to have every accused person have the full benefit of his constitutional right to "a speedy public trial,"[4] and for facilitating justice, that the actual trial be disincumbered of preliminary matters, and courts favor this dispatch.

In view of this, it is suggested that every State's attorney should, if possible, be in the court-house at the circuit clerk's office some hours before the opening of court, and provide himself with a docket, having the following particulars set out in an orderly manner: First, the title of each cause, whether on indictment or appeal; second, the nature of the offense; third, the name of the defendant's counsel when known; fourth, the facts of service of *capias*, of bail, and commitment if no bail, or the case is not bailable, with the names of the bail and amount of security; fifth, the fact of service and return of the subpœnas for witnesses for the prosecution. Indeed, such a docket ought by statute to be required to be made out by the circuit clerk, and ready for the State's attorney on his arrival at court, giving the clerk for making such docket proper compensation. So provided, the State's attorney on the first calling of the docket by the court is prepared to continue causes, to enter *nolle prosequi*, to take forfeitures of recognizances, and move for *scire facias*, and to suggest additional witnesses to be indorsed on the indictments, and move for attachments of witnesses who have been served, and fail to appear. He should

[1] R. S. 1845, ch. 30, § 201. [2] Id. § 176. [3] Id. § 177.
[4] Const. art. 13, § 9.

see that the copy of the indictment and lists required by section 180 of the Criminal Code, are furnished to the accused.

On the other hand, the defendant's counsel ought to be ready to make all necessary motions under section 163, bearing in mind, that the prisoner stands on all his rights, that he surrender or overlook none of them, and to file all such pleas in abatement as he may consider proper. He should bear in mind the distinction made by section 163, between motions as to form and those in arrest of judgment, and not defer such motions as are preliminary to that late and dangerous stage.

We suggest a few of such preliminary motions. It has been held, that such motion must be made where the attorney-general had resigned, and the court had appointed an attorney to prosecute who signed the indictment, it being deemed that no one was authorized to sign the same, and it was not set forth in the body of the indictment that the grand jury had authority to find the same, and that it was not averred in the indictment that the court was called specially to try the prisoner.[1] Such, also, is the objection that the indictment omitted to state it was found on the oaths of the grand jurors.[2] Such, also, is the objection that the grand jury, which may have found an indictment, was not legally summoned and impaneled.[3] Such, also, is the objection to the want of a minute specification of the character of the wound inflicted; yet, in that case, it was doubted whether such was an objection at all.[4] Where the indictment was for having possession of forged bank bills, with intent to utter and pass the same, and there was no distinct averment that they were for the "payment of money," yet the fact appeared therein by way of recital, the averment was considered immaterial, because the term "bank bill" carries with it a definite meaning as much as money; but even if such averment was necessary, the court held, that the objection goes to the manner of pleading the fact, and not to the fact itself, and as it appeared in the indictment by way of recital; it was an objection which should have been taken advantage of on motion before trial to quash the indictment.[5]

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[1] *Guyowski* v. *People*, 1 Scam. 479. [2] *Curtis* v. *People*, Bre. 197.
[3] *Stone* v. *People*, 2 Scam. 326. [4] Id. [5] *Townsend* v. *People*, 3 Scam. 329.

It has also been held, that if an offense is not set out with clearness and precision, the court will, on motion to quash, entertain it; but if the accused has submitted without any objection, to be tried under the indictment, an objection that is raised after conviction will not be regarded, if it relates only to form and not to an obvious and substantial defect.[1] Supposing all the preliminaries settled, and the indictment found valid, the next step in the trial is the arraignment of the prisoner.

### *Section* 2. *Arraignment.*

This means calling upon the accused when placed at the bar of the court for trial to answer the matter charged upon him in the indictment.[2] On this arraignment, the prisoner is required by the clerk to plead "guilty" or "not guilty," unless he have some special matter of defense to urge in answer to the indictment. It is advisable to move to quash the indictment before arraignment, if there is a probable fault to the form of the indictment, as such faults are cured by the plea of not guilty. It is sometimes advisable not to move to quash until after trial, this, however, only where there is a fatal defect to the indictment. After verdict the judgment may be arrested and indictment quashed for matter of substance.

In this connection it may be well to remark that if the prisoner is not prepared for trial, his counsel should have an affidavit for continuance prepared before arraignment, so that, immediately after arraignment, motion for continuance, based on the affidavit, may be made. Also, if change of venue is wished, the petition therefor should be ready to present immediately after arraignment.

The plea of not guilty forms the issue, and no second arraignment is required. Before arraignment the court will, almost invariably, as a matter of course, allow the prosecutor to indorse on the back of the indictment the names of additional witnesses for the prosecution. After arraignment if additional names of witnesses are placed on the back of the indictments, and the prisoner is not prepared to meet such new testimony

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[1] *Townsend* v. *People*, 3 Scam. 329. [2] Bl. Com. 322; Broom. C. L. 996.

but is taken by surprise, the court will continue the case, on application of the prisoner, and affidavit that he is taken by surprise.

As to the defense of "*autre fois acquit*" and "*autre fois convict*," there are some important decisions in Illinois. The Constitution of 1848, article 13, section 11, provides that "no person shall, for the same offense, be twice put in jeopardy of his life or limb." It was held, where a person was indicted for selling liquor without license and acquitted, that the people cannot prosecute a writ of error from such decision.[1] So, also, where the defendant was prosecuted before a justice of the peace for assault and battery, and an appeal taken to the Circuit Court, where the cause was reversed for want of jurisdiction in the justice of the peace, it was held, for the same reason, that a writ of error could not lie on behalf of the people from such decision.[2]

The principle, however, is very carefully guarded from abuse, as the following cases show. A was indicted for murder; the jury convicted him of manslaughter, and sentenced him to the penitentiary for one year. The defendant moved in arrest of judgment, for that the jury imposed no fine. The judgment was arrested and prisoner discharged. Subsequently he was indicted for manslaughter committed on the same person for whose murder he had been previously indicted and convicted of manslaughter. The defendant set up in bar to the second indictment the former conviction and discharge. The Supreme Court admitted the principle in *nemo bis vexari debet pro eadem causa*, provided the indictment was valid, and such as he could lawfully be convicted upon, but that if the first indictment was materially defective, the former prosecution is no bar to a subsequent prosecution for the same offense; but when the conviction was on an invalid indictment, and the prisoner has never received sentence, he cannot plead the former conviction in bar, for he has not legally been put in jeopardy. In this case the first indictment was valid, and the court arrested the judgment for an insufficient cause (want of imposing a fine). The effect of arresting the judgment is the same to the defend-

[1] *People* v. *Dill*, 1 Scam. 257. [2] *People* v. *Peggy Royal*, id. 557.

ant, whether the indictment is good or bad. The former conviction and discharge are no bar in this case.[1]

Under an indictment for forgery by alteration of an order drawn on three persons composing the firm of "J. Irwin & Co." On this indictment defendant was acquitted. Subsequently, during the term, another indictment was found against him precisely like the first, except that the persons on whom the order was drawn were described as composing the firm of "John Irwin & Co." Defendant pleaded "*autre fois acquit.*" The court held the plea good, for the reason that such plea is based on the principle, that no man can be more than once placed in jeopardy on the same accusation; if once arraigned on a valid indictment and acquitted, he cannot again for the same offense be tried. In this case the first indictment was valid, and the same evidence that would secure a conviction under the second, would have been sufficient for the first. The name of the firm under which the person traded, and upon which the forged order was drawn, need not be set out with more than common certainty, and even in that case unnecessary; the alteration in the indictment was not material.[2]

In another case, a party indicted for murder, was tried, and convicted of manslaughter; on his own motion, a new trial was granted. The court held, that the conviction for manslaughter was an acquittal on murder, and the prisoner could not be put on his trial for that offense, but only for manslaughter.[3] In another case, a party convicted of larceny prosecuted a writ of error, and procured a reversal and discharge on the ground of misdirection in the court below. The Supreme Court said: "As the judgment will be reversed at the prisoner's instance, he will not, in legal contemplation, have been in jeopardy, and may be again indicted and put on trial for the same offense."[4] In a prosecution for riot, it is no bar that one of the accused had been tried and fined for an assault and battery growing out of the same offense.[5] It is

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[1] *Gerard* v. *People*, 3 Scam. 363. [2] *Durham* v. *People*, 4 Scam. 174.
[3] *Brennan* v. *People*, 15 Ill. 514. [4] *Lane* v. *People*, 5 Gil. 308.
[5] *Freeland* v. *People*, 16 Ill. 381.

essential in these pleas that the crime charged in the first and second indictment be the same.

The form of arraignment is the holding up the right hand by the prisoner (though this is not indispensable, for any other mode of confessing, he is the person named, will be sufficient),[1] while the clerk reads the indictment. When so read, the clerk asks him: "How say you, guilty or not guilty?" To which he responds by confession, or denial, or special plea, as above.

This arraignment is most important, and before the prisoner pleads the final pleas of "guilty" or "not guilty," his counsel should see that all objections of a formal nature have been presented, on motion, to the court, under section 163 of the Code. Another reason is, that the rule, as to pleading by the defendant, is not the same as in civil cases. In the latter the defendant, by leave of the court, under statute 4 Anne, ch. 16, sections 4 and 5, may plead as many matters of fact as he may deem necessary for his defense, which statute is adopted here.[2] This provision has not been extended to criminal matters, hence, as to them, they remain just as the old common law rule was in civil cases, before that statute was enacted, namely, that no more than one plea can be pleaded to any indictment or criminal information. The Criminal Code mentions no plea, but that on the arraignment of "guilty" or "not guilty;" but this does not take away the common law right of the defendant to plead misnomer, to demur or plead specially. A plea in abatement of misnomer may be pleaded with "not guilty," and the same jury at same time try both issues. The plea in abatement must be verified by affidavit.

Should the prisoner, when brought to the bar and arraigned, stand mute, or refuse to plead, the Code provides that such shall be taken as a denial of the indictment, and the court will enter on the minutes an order for a plea of "not guilty," and the trial, judgment and execution proceed as if he had pleaded "not guilty."[3]

By another section of the Criminal Code,[4] it is provided that where the defendant pleads "guilty" the court will not enter

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[1] Raym. 408. [2] R. S. 1845, ch. 83, § 13; Scates, 253.
[3] R. S. 1845, ch. 30, § 182. [4] Id. § 183.

the plea, until it has explained to him the consequences of such plea. If, after such explanation, he persists in his plea, the same will be received and recorded, and the court will render judgment as if defendant had been tried and convicted.

It is provided in case the clerk should neglect his duty to enter the defendant's plea on arraignment, it may be done at any time by order of the court, and thus cure the error or defect.[1]

The defendant having been arraigned, and the pleas of the general issue put in, the next stage in the trial is to swear the jury, which is done subject to a right of challenge on part of the defendant, and the prosecution, to the array or to individual jurymen.

### *Section 3. Challenging the jury.*

Our Criminal Code provides that every person arraigned for capital offenses, has the right to a peremptory challenge of twenty jurors, and no more; in cases punishable by imprisonment for a term not over eighteen months, he is entitled to a peremptory challenge of ten jurors in all; in other criminal trials, he can peremptorily challenge six jurors; under a recent statute the State's attorney is entitled to the same number of challenges as the accused is entitled to.[2] The right of challenge, and mode of exercising it, are minutely considered by Mr. Archbold,[3] and to this work we refer. The defendant's counsel should keep an accurate note of the peremptory challenges he has made.

We may remark that challenges to the array are but seldom used, it is an exception to the whole panel, based on some partiality or default in the array of the panel by the county court.

Challenges to the polls are frequent, it is scarcely necessary to remark that challenges must be made immediately on the appearance of the jurors in answer to their names, four being called at a time, and before they are sworn. The challenge in respect to office is not used here, except perhaps in the case of a juror having served as a grand juror within twelve months,[4]

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[1] R. S. 1845, ch. 30, § 181. [2] Id. § 184, Law 1869, p. 22.

[3] Arch. Cr. Pl. 12th ed. pp. 135 to 141. [4] *Bissell* v. *Ryan*, 23 Ill. 570.

or petit juror in the Circuit Court within twelve months.[1] The challenge as to personal defect is sometimes used, as infancy, alienage, not understanding English, old age, that is, over sixty years of age, which is an exemption, not a disqualification.[2] The chief cause of challenge is for bias, favor, partiality and opinion formed on the case. This is very carefully guarded, as where a juror was examined, and stated he had an opinion in the case; he was, however, accepted by the prisoner, the court ordered him to stand aside, and refused to allow him to be sworn on the jury, and this before he had been accepted or challenged by the People. The Supreme Court held, that he was subject to challenge for favor, and until he was challenged he was competent to sit as a juror, and that the Circuit Court erred in excluding him.[3] By a recent law, it is provided in trials for murder, as cause of challenge, whether the juror has conscientious scruples against capital punishment, or is opposed to the same.[4] A challenge is not complete until it is passed on by the People and the prisoner. We now suppose the jury to have been tried, selected and sworn; they take their places, and are ready to hear the evidence. The jury are judges of the law and the fact,[5] and though they may be instructed by the court in questions of law, yet they may act on their own judgment, and disregard the views of the court.[6] When the jury is sworn, the prisoner is "given in charge to them."

### *Section 4. Mode of trial.*

In misdemeanors, the defendant may waive a jury, and put himself upon the court for trial.[7] It is otherwise in other offenses. All trials for criminal offenses are governed by the course of the common law, except where the Code prescribes a different mode. The rules of evidence at common law prevail, unless otherwise prescribed by the Code.[8]

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[1] Law 1859, p. 154. [2] *Davis* v. *People*, 19 Ill. 78.
[3] *Van Blaricum* v. *People*, 16 Ill. 264. [4] Law 1869, p. 191, § 4.
[5] R. S. 1845, ch. 30, § 188.
[6] *Schnier* v. *People*, 23 Ill. 29; *Fisher* v. *People*, id. 294.
[7] *Zurriseller* v. *People*, 17 Ill. 105. [8] R. S. 1845, ch. 30, § 188.

The counsel for the prosecution has the opening and concluding address to the jury. The prosecutor opens the case: as we have said, he does not detail evidence, but simply the facts he expects to prove, the law on the case, and may anticipate the general theory of the defense and suggest the answer thereto; this is not often done. He then calls the witnesses as named on the back of the indictment; they are sworn, unless their competency be assailed, as that they are infamous under the Code,[1] or approvers,[2] or otherwise legally incompetent. The question of competency is one for the court; credibility lies with the jury.[3] Color is no objection, nor is interest. Sometimes the objection as to religious belief is made. In this State it has been held that "all persons believing in the existence of a God and a future state are good witnesses, though they may not believe in future punishment."[4] The burden of proof as to unbelief lies on the objector, and must be shown by evidence of witness' declarations previously made to others. Should a deaf mute be shown to have understanding, he or she is competent to testify by signs.[5] Generally, those deaf and dumb from birth are presumed to be idiots; and such, with lunatics and insane persons, are incompetent, unless in the sane intervals of such lunacy and insanity. Children of very tender age are incompetent, unless on examination it appears that they understand the nature of an oath, and know good and evil. Husband and wife cannot testify for or against each other, except in case of forcible abduction and marriage, when she can testify, and for rape on her by others, and for his assault and battery on her, or his maliciously shooting at her, and breaches of the peace by him as to her; but this only as to facts which no other witness can prove.[6]

The examination of witnesses is conducted in accordance with certain fixed principles, which must be observed, and scrupulously adhered to; there is no material difference in regard to the rules of evidence between criminal and civil procedure. "A fact," says Lord ERSKINE, "must be established by the same evidence, whether it is to be followed by a criminal or civil consequence.[7]

[1] R. S. 1845, ch. 30, § 174. [2] Id. § 17. [3] Id. 15. [4] *Noble* v. *People*, Bre. 29.
[5] 1 Greenl. Ev. 366. [6] *Rex* v. *Jagger*, 2 Russ. Cr. 606. [7] How. St. Tr. 764.

The plea of "not guilty" makes it incumbent on the prosecutor to prove every fact and circumstance constituting the offense as stated in the indictment or information. On the other hand, the defendant may give in evidence, under this plea, not only every thing which negatives the allegations in the indictment, but also all matters of excuse and justification.[1]

The chief rules of evidence are, that the proofs be relevant to the issue; that the best evidence the nature of the case admits must be given; that secondary evidence will only be received where the best and most direct evidence cannot be had; that hearsay is not in general admissible; and this evidence must be on the oath or affirmation of the witness, given before the jury, in face of the court, in presence of the accused, and must be received under all the advantages of examination and cross-examination.[2] Experiments illustrating modes of suicide should be allowed with great caution.[3]

The accused stands on all his rights, and is presumed innocent until found guilty by the verdict of the jury. The trial must be public. As to all these, they are substantial realities, not formal. So as a prisoner in a capital case is considered standing on all his rights, and waiving nothing on the score of irregularity, it has been held, that an agreement between his counsel and that of the people, that the jury may deliver their verdict to the clerk, is irregular; and a verdict so delivered under such agreement in the absence of the jury may be set aside. The prisoner has a right to poll the jury, which he can not do if they are absent.[4]

When each witness has been examined by the prosecution, he is handed over to the defendant's counsel for cross-examination, and *vice versa* as to defendant's witnesses, when the case for the prosecution is closed. The defendant's counsel opens the defense, calls his witnesses, subject to the same rules as witnesses for the prosecution, and to cross-examination by the prosecution. The defendant's counsel then speaks to evidence, and the prosecution closes.

Instructions on the law in the case in writing are then read to the jury on the part of the prosecution and the defendant,

[1] Arch. Cr. Pl. 94. [2] *Rex* v. *Woodcock*, 1 Leach C. C. 502.
[3] *Jumpertz* v. *People*, 21 Ill. 408. [4] *Nomaque* v. *People*, Bre. 109.

the same having been examined and allowed by the court, and the court may itself give written instructions to the jury. It is the duty of the court to see that the jury understand the law of the case they are trying; but the court can give no verbal instructions, nor charge to the jury. The indictment and pleas, if any, and the instructions, are given to the jury to take with them to their room to consider their verdict.

### *Section 5. Of the jury.*

At this stage of the trial an officer is called and sworn, and in his charge the jury retire from the court to their room, to consider of their verdict. It has been held by the Supreme Court, that the law in capital cases undoubtedly is, that, from the commencement of the trial till the rendition of the verdict, the jury, during all the adjournments of the court, should be placed in charge of an officer, unless otherwise ordered by the court, with the consent of the accused, and the attorney for the people.[1] It has been held in the same case that, where, in a criminal case, the jury separate without the consent of the accused, it is an irregularity; and the court below, on the fact being established, would be bound to set the verdict aside, and grant a new trial. And in the same case it was held, that a jury impaneled to try a capital case should not be allowed to dine with others at a public table at a hotel. Should the jury speak to persons not of the jury as to their verdict before its rendition, it is irregular.

The court will not allow any of the jurors, while deliberating, to leave the jury room and come into court and hold a conversation with the court. If they desire to communicate with the court, they should send a request to the court by the officer in attendance, that they may in a body be brought into court.[2]

In a murder case, where the court remarked to the jury that they would not be discharged until there was no probability of their agreeing, and further that before the next term of the court the witnesses may be in their graves and justice cheated, held good cause for setting the verdict aside and a new trial granted.[3] In that case, where the jury come into court asking

[1] *Jumpertz* v. *People*, 21 Ill. 411. [2] *Fisher* v. *People*, 23 Ill. 295. [3] Id. 294.

instructions, and are placed so as to be influenced by the court, the prisoner has the unquestioned right to present such views in the shape of instructions, as the circumstances may require, in his own behalf.

When the jury have decided unanimously, they write their verdict, following the instructions of the court as to form, notify the officer, and are by him brought into court; this verdict they hand to the clerk, who reads the same, and if it be correct the jury are discharged. Should the jury fail to agree, and there is no probability of their agreeing, they should notify the officer, who will bring them into court; and, if the court be satisfied they cannot agree, they will be discharged. A discharge of the jury is not an acquittal;[1] the case may be tried before another jury.

*Section* 6. *Arrest of judgment, and a new trial.*

Before the verdict is recorded and judgment thereon entered, is the time for motions in arrest of judgment and for new trial. Section 163 of the Criminal Code provides, "that no motion in arrest of judgment, or writ of error, shall be sustained, for any matter not affecting the real merits of the offense charged in the indictment."[2] This narrows the right to make such motions to matter of substance. We have seen several instances where the court will grant new trials, but motions simply in arrest are not so numerous. In manslaughter, when it appeared on the trial that the two principal witnesses had sworn differently before the coroner from what they did on the trial, and their testimony on the trial was not corroborated, but clouded with suspicion, a new trial was granted.[3]

Should the court refuse the motion for new trial and in arrest of judgment, the defendant, for manifest and material error, appearing on the record, can have writ of error on complying with sections 198 and 199 of the Criminal Code; and section 197 provides for bills of exceptions, which must fairly state the truth of the case.

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[1] *Re Newton*, 2 Bre. 716. [2] R. S. 1845, ch. 30, § 163.
[3] *Gibbons* v. *People*, 23 Ill. 519.

### *Section 7. Judgment.*

Where there is but one count, there is no difficulty; but where the indictment consists of several counts, charging different offenses, some of which are bad, others doubtful, and some good, and the verdict is general, the safer course for the prosecution is to have judgment arrested on the bad and doubtful counts, and judgment entered and sentence pass on the good counts.[1] Judgment should be entered on each count, *nol. pros.* on the bad ones, and a misjoined count will be cured by verdict of acquittal thereon.[2] The judgment being entered, nothing remains but sentence, where necessary, and execution. Judgment for costs is an incident following the judgment.[3]

This statement as to the trial and its incidents must be brief, the matters suggested are in larger works, an outline of practical matters is here given. Continuances and change of venue are not noticed, as they are matters of daily occurrence, and do not need special detail. Nothing but a full, absolute and unconditional pardon can absolve an offender from a valid judgment in felonies and high misdemeanors, and this pardon can only come from the executive, as the "fountain of mercy."

[1] Broom Com. C. L. 1005 and note (e). [2] *Reg.* v. *Ferguson*, 1 Dearsl. 427.
[3] *Moody* v. *People*, 20 Ill. 319.

## CHAPTER VI.

WHERE THE CRIMINAL CODE MAY BE FOUND.

I. The Criminal Code of Illinois forms chapter 30 of the Revised Statutes of 1845, pp. 151 to 193, inclusive.

II. There are provisions of a criminal nature in other parts of the Revised Statutes, and in its appendix, such as

1. Embezzlement by certain officers (R. S. 1845, ch. 28, § 13; Scates, 372).
2. Rewards for apprehending felons (id. ch. 45, § 8; id. 1113).
3. Marriages (id. ch. 69, §§ 2, 7, 8; Scates, 579, 580).
4. Adultery of whites and negroes (id. ch. 74, § 23; id. 418).
5. Rewards for taking horse thieves (id. app. 574, § 1; id. 1113).
6. Recognizances (id. app. 679; id. 418.)

III. Rewards for taking fugitives from justice (L. 1847, p. 48; Scates, 306).

IV. Purple's Statutes, pp. 358 to 407 inclusive, embraces all in R. S. 1845, and subsequent criminal laws to and including Laws of 1855.

V. Scates, Treat and Blackwell's Statutes, pp. 375 to 422, inclusive, with all criminal laws in Purple, and those to and including Laws of 1857.

VI. All subsequent criminal legislation will be found in the Session Laws of 1859, 1861, 1863, 1865, 1867 and 1869, and are as follows:

1859. 1. Act defining arson, p. 16.
2. Aggravated assaults, p. 153.
3. Embezzlement of railroad tickets, p. 154.
4. Burglary of school houses or railroad cars, id.

1861. 1. Public bridges, p. 74.
2. Cairo levees, p. 114.
3. Illegal voting, p. 268.
4. Penalty on judges of elections, p. 268.
5. Perjury at elections, id.
6. Sale of liquor on election day, p. 269.

1863. Threats, combinations and strikes, p. 70.

1865. 1. As to liquor law, p. 35.
2. Elections, p. 58, § 14.
3. Cemeteries, malicious mischief in, p. 105
4. Larceny of horses, p. 106

1867. 1. Injuring canals, p. 88.
2. Confidence game, id.
3. Abortion and murder in, p. 89.
4. Larceny, p. 90.
5. Capital punishment, id.
6. Insane hospital, p. 139, § 2.
7. False pretenses, p. 153.
8. Malicious mischief, p. 158.

1869. 1. Arson, p. 4.
2. Capital punishment, id.
3. Assuming corporate names, p. 15.
4. Challenges of jurors, p. 22.

1869. 5. Stealing newspapers, p. 23.
6. Frauds on insurance companies, p. 25.
7. Pecan timber, mischief to, p. 27.
8. Fair grounds, mischief to, id.
9. Cruelty to animals, p. 44.
10. Pardoned convict, pp. 48, 49.
11. Texas or Cherokee cattle, p. 72.
12. Frauds on homestead corporations, p. 75, § 8.
13. Prize fighting, p. 80.
14. Criminal Code, p. 191; stealing from person of another, § 1.
15. id.; burglary, § 2.
16. id.; prize fighting, § 3.
17. id.; challenges of jurors in murder, § 4.
18. id.; stealing in another State, § 5.
19. id.; stealing lead pipes, § 6.
20. id.; unlawful taking a horse, § 7.
21. id.; adulterating candies, § 8.
22. id.; prisoner and bail failing to appear, § 9.
23. Frauds in elections, p. 199.
24. Frauds on gas companies, p. 200.

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### Abbreviations used.

R. S. 1845, ch. , § , refers to Revised Statutes of 1845.
R. S. 1845, app. refers to appendix to above.
Purp. refers to Purple's edition of the statutes.
Scates refers to Scates, Treat and Blackwell's edition of same.
Bre. — Breese's Reports; Scam. — Scammon's Reports, 4 vols.
Gilm. — Gilman's Reports, 5 vols.; Ill. — Illinois Reports.
Arch. — Archbold's Criminal Pleading and Practice, the inner paging.
Tr. & H. — Train and Heard's Precedents.
The State Reports and English Reports are cited as generally referred to.
Elementary works according to common usage.

# PART II. PRECEDENTS OF INDICTMENTS.

## OUTLINE OF AN INDICTMENT, SHOWING THE FORMAL PARTS.

### No. 1. In the Circuit Court.

*Caption.*

In the Circuit Court of ——— county, of the ——— Term A. D. 186—.[1]

*Venue and commencement.*

STATE OF ILLINOIS, } ss.[2]
——— COUNTY, }

The grand jurors chosen, selected, and sworn in and for the county of ———, and State of Illinois, in the name and by the authority of the people of the State of Illinois, upon their oaths, present.

*Statement.*

That, etc., (*here insert the offense and time and place of committing the same, with reasonable certainty*).[3]

*Conclusion.*

"Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of ———."[4]

### No. 2. In an Inferior Criminal Court.

*Caption.*

In the Superior Court of the city of Chicago (or as the case may be), of the ——— Term A. D. 186—.

[1] *Duncan* v. *People*, 1 Scam. 456. The caption is not a count nor a portion of a count.

[2] The venue is part of the commencement of a count, and not of the caption, and see *Whitesides* v. *People*, Breese, 4. [3] See § 162, Criminal Code, Gross, 85.

[4] Const. 1848, art. 5, § 26; every indictment must so conclude.

*Venue and commencement.*

STATE OF ILLINOIS, }
——— COUNTY, } *ss.*
CITY OF ——, }

The grand jurors chosen, selected, and sworn, in and for the city of ——, in the county of ——, and State of Illinois, in the name and by the authority of the people of the State of Illinois, upon their oaths, present.

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*Statement.*

That, etc., (see No. 1 above.)

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*Conclusion.*

(See No. 1 above; there is no difference in the conclusion in the Circuit Court and an inferior criminal court.)

NOTE. The *second* and also subsequent counts commence as follows:

"And the grand jurors aforesaid, chosen, selected, and sworn as aforesaid, in the name and by the authority aforesaid, on their oaths aforesaid, do further present."[1]

There are other conclusions to indictments, such as *ad commune nocumentum. To the common nuisance*, thus: "To the great damage and common nuisance of all the citizens of said State." This is used in indictments for nuisances, public indecency, etc.

*To the evil example.*—"To the evil example of all others in the like case offending." This is used in perjury and riot, and other public offenses, not nuisances, etc.

Indictments for common law offenses should conclude "contrary to law," and not contrary to the statute.

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SECTION 1. ACCESSORIES TO CRIMES.

This section forms Division II, of the Criminal Code, and comprises sections 13, 14.

Section 13 applies to accessories before the fact; they are considered as principals.

Section 14 applies to accessories after the fact.

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[1] *Duncan* v. *People*, 1 Scam. 456.

*Decisions.* — *Baxter* v. *The People*, 3 Gilm. 368; *Brennan* v. *The People*, 15 Ill. 511; *State* v. *Butler*, 17 Verm. 145; *Reg.* v. *Chapple*, 9 C. & P. 355; *Rex* v. *Jaris*, 2 M. & R. 40; *Rex* v. *Beveridge*, 3 P. Wms. 439; *Rex* v. *Wallace*, 2 Mo. C. C. 200.

*Limitation.* — Under section 13, according to the nature of the principal offense, the penalty follows the offense and is the same. Under section 14 the limitation follows the principal offense. *Penalty* — imprisonment not over two years; fine, not over $500, in the discretion of the court, according to the circumstances and nature of the crime.

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1. *Indictment against an accessory before the fact in murder.* (R. S. 1845, ch. 30, § 13; Purple, 360; Scates, 376.)

(*After stating the offense of the principal, and immediately before the conclusion, charge the accessory before the fact, thus:*)

And the grand jurors aforesaid, selected and sworn as aforesaid, in the name and by the authority aforesaid, on their oaths aforesaid, do further present; * that J. W. late of C., aforesaid, in the county aforesaid, before the felony and murder was committed in manner and form aforesaid, to wit, on the first day of July, in the year of our Lord ——, at C., aforesaid, in the county aforesaid, did feloniously and willfully incite, move, procure, aid, counsel and command the said J. S., the said murder and felony in manner aforesaid, to do and commit; against, etc., and contrary, etc.

NOTE. — This precedent will guide the pleader in all other indictments of this class.

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2. *Indictment against an accessory after the fact.* (*Id.*)

(*Proceed as in No.* 1, *above, to the asterisk* [*], *and go on thus:*)

That J. W., late of C. aforesaid, in the county aforesaid, well knowing the said J. S. to have committed the (felony and larceny) aforesaid, after the same was committed as aforesaid, at C. aforesaid, in the county aforesaid, him, the said J. S. did feloniously receive, harbor, and maintain; contrary, etc. (as in No. 1). (Arch. 693.)

The grand jurors chosen, selected and sworn in and for the county of —— and State of ———, in the name and by the authority of the people of the State of ——, upon their oaths present, that John Smith, late of said county, on the —— day

of ——, in the year of our Lord one thousand eight hundred and ——, at the county of ——, and State of ——, one pair of boots of the value of ten dollars, of the proper goods and chattels of one John Brown, then and there being found, did then and there feloniously steal, take and carry away.

And the jurors aforesaid, chosen, selected and sworn as aforesaid by the authority aforesaid, upon their oaths aforesaid, do further say that one John Jones, having full knowledge that the said John Smith had committed the said felony and larceny in form aforesaid, afterward, to wit, on the —— day of ——, in the year last aforesaid, at the county of —— aforesaid, unlawfully and feloniously did harbor and protect the said John Smith.

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SECTION 2. CRIMES AGAINST THE GOVERNMENT AND PEOPLE.

This forms Division IV of the Criminal Code. (R. S. 1845, ch. 30, §§ 19–21; Purple, 361; Scates, 377.)

*Decisions.* — Foster, 220; 3 Inst. 9; 1 Hale, 144; 2 Salk. 634; *Reg* v. *Frost*, 9 C. & P. 129; *Rex* v. *Earls of Essex and Southampton*, Moor, 620; 1 St. Tr. 197; *Rex* v. *Lord G. Gordon*, Doug. 590.

*Limitation.* — Treason, *none;* misprision of treason, three years. *Penalty* — Treason, death; misprision of treason, penitentiary not over two years.

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1. *Indictment for treason in levying war.*

(R. S. 1845, ch. 30, § 20; Purple, 361; Scates, 377.)

The grand jurors selected and sworn in and for the county of ——, and State of Illinois, in the name and by the authority of the people of the State of Illinois, upon their oaths, present: That J. S., late of C., in the county of C., and State of Illinois, being a citizen of said State, not regarding his duty of allegiance, nor having the fear of God in his heart, but being moved and seduced by the instigation of the devil, and wholly withdrawing the allegiance, fidelity and obedience which every true and faithful citizen of the State aforesaid should, and of right ought to, bear toward the government and people of this State, to wit, the State of Illinois aforesaid, on the first day of July, in the year of our Lord —— † with force and arms, * at C. aforesaid, in the county of C. aforesaid, together with divers other false traitors to the jurors aforesaid unknown, armed

and arrayed in a warlike manner, that is to say, with guns, muskets, blunderbusses, pistols, swords, bayonets, pikes and other weapons, being then and there unlawfully, maliciously and traitorously assembled and gathered together against the government and people of this State, most wickedly, maliciously and traitorously did levy and make war against the government and people of the State aforesaid, within the State aforesaid; and did then and there maliciously and traitorously attempt and endeavor by force and arms to subvert and destroy the Constitution and government of this State as by law established, and deprive the people aforesaid of the honor, sovereignty and power of the State aforesaid, in contempt of said government and people of this State and its laws, to the evil example of all others in the like case offending; contrary to the duty of the allegiance of him, the said J. S.; against the peace and dignity of the people of the State of Illinois, and contrary to the form of the statute in such case made and provided. (Arch. 492.)

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2. *Indictment for treason by adhering to the enemies of the State.* (Id.)

(*Use No.* 1 *of this head to the dagger* [†], *and proceed thus:*)
and long before, and continually from thence hitherto, an open and public war was, and is yet prosecuted and carried on between the said people of the State of Illinois, and ——, to wit, at C. aforesaid, in the county aforesaid; and the said J. S. well knowing the premises, and contriving and with all his strength intending to aid and assist the said ——, so being an enemy of the said people of the State of Illinois as aforesaid, heretofore and during the said war, to wit, on the said first day of July, in the year last aforesaid, and on divers other days, as well before as after, with force and arms, at C. aforesaid, in the county aforesaid, maliciously and traitorously was adhering to, and aiding and comforting the said ——, so being then and there an enemy of the said people as aforesaid. *And that* in the prosecution, performance and execution of his treason and traitorous adhering aforesaid, he, the said J. S., as such false traitor as aforesaid, during the said war, to wit, on the said first day of July, in the year last aforesaid, and on divers (etc.,

*here set out the overt acts, introducing each overt act thus:*) And in further prosecution, performance and execution of his treason and traitorous adhering aforesaid, he, the said J. S., as such false traitor as aforesaid, afterward and during the said war, to wit, on (etc. etc., *concluding thus*), in contempt of said government and people of this State, and its laws, to the evil example, etc. (*go on as in No.* 1 *of this head to end*) *conclude against the statute and against the peace, etc.*

NOTE. — *The special acts of adherence must be set forth in the indictment as overt acts, it is not necessary to detail the evidence, it is sufficient if the charge be reduced to reasonable certainty, so as to apprise the defendant of the nature of the offense charged.* (Foster, 220, 221; Arch. 494.)

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3. *Indictment for Misprision of Treason.*

(R. S. 1845, ch. 30, § 21; Purple, 361; Scates, 377.)

(*Use No.* 1 *of this head to asterisk* [*], *and go on thus:*) feloniously, unlawfully, maliciously and traitorously did then and there conceal and keep secret the treasonable conspiracy, plan and design of one H. C., a citizen of said State, with divers other false traitors to the jurors aforesaid unknown, before that time entered into, designed and planned, to arm and array themselves in a warlike manner there, on the day and year aforesaid, to assemble and gather together, and appear at C. aforesaid, in the county of C. aforesaid, in the State aforesaid, armed and arrayed as aforesaid with guns (*etc., as in No.* 1 *of this head*), then and there to levy and make war against the government and people of this State, and then and there maliciously and traitorously to attempt and endeavor by force and arms to subvert and destroy the Constitution and government of this State as by law established; in contempt (*etc., conclude as in No.* 1 *above, and also conclude, contrary to the statute, and to the peace, etc.*)

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## SECTION 3. CRIMES AGAINST PERSONS.

This section forms Division V of the Criminal Code. (R. S. 1845, ch. 30, § 22 to § 57 inclusive; Purple, 362–367; Scates, 377–382.

The several offenses comprised in this section are referred to by the letters of the alphabet, as "*murder*" by letter (*a*). The changes made by statutes passed since the Revised Statutes of 1845, are noticed in their proper places.

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(*a*) Murder.

(See R. S. 1845, ch. 30, §§ 22, 23, 24, 32, 33, 42; Purple, 362, and see above sections; Scates, 377, and see above sections; Gross, 6, and see above sections.)

*Decisions.*—For forms in particular cases, see *Fairlee* v. *People*, 11 Ill. 1, where errors are pointed out; *Jackson* v. *People*, 18 id. 269. Murder by blows with a stick; *Gardner* v. *People*, 3 Scam. 83; *Brennan* v. *People*, 15 Ill. 511, for common purpose; *Schermer* v. *People*, 33 id. 277, form of complete record. Murder in general, see *Baxter* v. *People*, 2 Gilm. 578; 3 id. 368; *Campbell* v. *People*, 16 Ill. 17; *Davis* v. *People*, 19 id. 74; *Fisher* v. *People*, 23 id. 288; *Gates* v. *People*, 14 id. 433; *Gerard* v. *People*, 3 Scam. 362; *Gibbons* v. *People*, 23 Ill. 518; *Guyowski* v. *People*, 1 Scam. 476; *Hopps* v. *People*, 31 Ill. 385; *Jumpertz* v. *People*, 21 id. 375; *Maber* v. *People*, 24 id. 241; *McIntyre* v. *People*, 38 id. 514; *McKinney* v. *People*, 2 Gilm. 240; *Murphy* v. *People*, 37 Ill. 447; *Nomaque* v. *People*, Bre. 109; *Nixon* v. *People*, 2 Scam. 267; *Rainey* v. *People*, 3 Gilm. 71; *Schermer* v. *People*, 33 Ill. 276; *Schnier* v. *People*, 23 id. 17; *Sellers* v. *People*, 3 Scam. 412; *Stone* v. *People*, 2 id. 326; *Yates* v. *People*, 38 Ill. 527; *Birch ex parte*, 3 Gilm. 134; *Ammons* v. *People*, 11 Ill. 6. And see *Commonwealth* v. *Webster*, 5 Cush. 295; and see *Rex* v. *Sharwin*, 1 East P. C. 341; 22 Maine, 369; 7 Carr. & P. 250, id. 788; 5 Carr. & P. 128; and see *State* v. *Owen*, 1 Murph. 452; *Larkin's case*, 1 Bulstr. 124; and see *Rex* v. *Tye*, Russ. & Ry. C. C. 345. The value of the instrument need not be stated. *Ward* v. *State*, 7 Blatch. 101. See 2 Hale P. C. 185, as to part wounded, *State* v. *Owen*, 1 Mumf. 452, dimensions of wounds; *Rex* v. *Lad*, 1 Leach C. C. 96; 1 East P. C. 314, as to times of death and wound; 3 Greenl. Ev. § 143, as to place of wounding, and of death; *Dias* v. *State*, 7 Blatch. 20, as to malice aforethought and name of

deceased. It is not murder until the party die, hence the day of the death must appear. (1 East P. C. 347.)

*Limitation*—none. *Penalty* may be death, or imprisonment for life in the penitentiary, or for fourteen years, according to the verdict. (Laws 1867, § 1, p. 90, and Laws 1869, § 1, p. 4.)

*Section 22, Criminal Code, gives several cases of murder: a precedent for each is given. Where a statute construes the death as murder, a precedent is given under that statute in its proper place.*

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1. *Indictment for murder by poisoning.*

(R. S. 1845, ch. 30, § 22; Purple, 362; Scates, 377.)

(*Use the commencement No.* 1, *ante* "*Skeleton of Indictment*," *and go on to the Statement, thus:*)

That J. S., late of C., in the county of C. aforesaid, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and of his malice aforethought, wickedly contriving and intending one J. N. *with poison*, willfully, feloniously, and of his malice aforethought, to kill and murder, on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* feloniously, willfully, and of his malice aforethought, a large quantity of a certain deadly poison, called white arsenic, to wit, the quantity of two drachms of the said white arsenic, did put, mix and mingle into, and with a certain quantity of beer, which the said J. N. was then and there about to drink (the said J. S. then and there well knowing that he, the said J. N., intended, and was then and there about to drink the said beer, and the said J. S., then and there, also well knowing the said white arsenic, was aforesaid by him put, mixed and mingled into, and with the said beer, to be a deadly poison); and that the said J. N., afterward, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, did take, drink, and swallow down a large quantity, to wit, half a pint of the said beer, with which the said white arsenic was so mixed and mingled by the said J. S. as aforesaid (he, the said J. N., at the time he so took, drank, and swallowed down the same beer, not knowing there was any white arsenic, or any

other poisonous or hurtful ingredient mixed or mingled with the said beer), by means whereof, he, the said J. N., then and there became sick, and greatly distempered in his body; and the said J. N. of the poison aforesaid, so by him taken, drank, and swallowed down as aforesaid, and of the sickness occasioned thereby, from the said third day of August, in the year last aforesaid, until the twenty-second day of the same month, in the same year, at C. aforesaid, in the county aforesaid, did languish, and languishing, did live; on which twenty-second day of August, in the year aforesaid, the said J. N., at C. aforesaid, in the county aforesaid, of the poison aforesaid, and the sickness thereby occasioned, died; and so the jurors aforesaid, do say that the said J. S., the said J. N., in manner and form aforesaid, feloniously, willfully, and of his malice aforethought, did kill and murder. Against the peace, etc., and contrary, etc.[1] (Arch. 432.)

NOTE. — An indictment which charges only, that by means of the taking and swallowing of the poison, the deceased "*became mortally sick and distempered in his body*," "*and of the said mortal sickness died*," is good, without stating that he died "*of the poison aforesaid*." *Reg.* v. *Sandys*, C. & Mar. 345; 2 Moody C. C. 227.

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2. *Indictment for murder by striking with an axe.* (Id.)

(*Commence as in No.* 1 *of this head, and proceed thus:*)

That John L. Chapman, late of S., in the county of M., on the fourteenth day of September, in the year of our Lord one thousand eight hundred and fifty-three, at S. aforesaid, in the county aforesaid, with force and arms, in and upon one Reuben Cozzens, did make an assault, and that the said John L. Chapman, with a certain axe, the said Reuben Cozzens, in and upon the back side of the head of the said Reuben Cozzens, then and there feloniously, willfully, and of his malice aforethought, did strike and bruise, giving to the said Reuben Cozzens, then and there, with the axe aforesaid, in and upon the said back side of the head of the said Reuben Cozzens, one mortal wound, of which said mortal wound the said Reuben Cozzens then and there instantly died. And so the jurors aforesaid,

[1] Here, and in the following precedents, use the full conclusion. Skeleton No. 1, *ante*.

upon their oath aforesaid, do say, that the said John L. Chapman, the said Reuben Cozzens then and there, in manner and form aforesaid, feloniously, willfully, and of his malice aforethought, did kill and murder; against the peace, etc., and contrary to, etc. (*Commonwealth* v. *Chapman*, Monthly Law Reporter, vol. 7, N. S. 155.)

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3. *Indictment for murder by starving.* (Id.)

The grand jurors aforesaid, etc., upon their oaths, present, that C. D., single woman, late of C., in the county of C., on the first day of June, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, in and upon one E. F., a male child being alive, and of tender age, to wit, of the age of one month, feloniously, willfully, and of her malice aforethought, did make an assault; and that the said C. D., the said E. F. did then and there take and carry to a certain shed there situate, and the said E. F., so being alive, did then and there, in the said shed, feloniously, willfully, and of her malice aforethought, hide, secrete and conceal; and the said E. F., so being alive, and so being hidden, secreted, and concealed, the said C. D. did then and there feloniously, willfully, and of her malice aforethought, leave and desert, and to nourish, sustain and provide for the said E. F., the said C. D. feloniously, willfully, and of her malice aforethought, did wholly neglect and refuse; by reason of which said hiding, secreting, and concealing the said E. F. in manner and form aforesaid, by the said C. D., and of the said refusal and neglect of the said C. D., to nourish, sustain, and provide for the said E. F., the said E. F. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D. the said E. F., in manner and form aforesaid, feloniously, willfully, and of her malice aforethought, did kill and murder; against the peace, etc., and contrary, etc. (Tr. & H. Prec. altered 323.)

NOTE. — If the name of the child be unknown, let it be so stated; the indictment must state its name, or, if it have no name, either by baptism or reputation, state it to be to the jurors unknown. (*Reg.* v. *Biss*, Moo. C. C. 93.)

4. *Indictment for murder by drowning.* (Id.)

The grand jurors, etc., upon their oaths present,[1] etc., etc., that C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, with force and arms, at C., aforesaid, in the county aforesaid, in and upon one E. F., feloniously, willfully and of his malice aforethought, did make an assault, and that the said C. D. did then and there feloniously, willfully and of his malice aforethought, cast, throw and push the said E. F. into a certain pond there situate, wherein was a great quantity of water, by means of which said casting, throwing and pushing of the said E. F. into the pond aforesaid, by the said C. D., in form aforesaid, the said E. F. in the pond aforesaid, with the water aforesaid, was then and there choked, suffocated and drowned; of which said choking, suffocation and drowning, the said E. F. then and there instantly died. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said C. D., in manner and form aforesaid, the said E. F. feloniously, willfully and of his malice aforethought, did kill and murder; against the peace, etc., and contrary, etc. (Arch. 431; Tr. & H. Prec. 324.)

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5. *Indictment for murder by stabbing with a knife.* (Id.)

(*Use No.* 1, *of this head, to the asterisk* [*], *omitting the words* "*with poison*," *and proceed thus:*)

in and upon the said J. N., in the peace of God and of the people, etc., then and there being, feloniously, willfully and of his malice aforethought, did make an assault, and that the said J. S., with a certain knife, which he, the said J. S., in his right hand, then and there had and held, the said J. N. in and upon the left side of the breast of the said J. N., then and there feloniously, willfully and of his malice aforethought, did strike, cut, stab and thrust, giving to the said J. N., then and there, with the knife aforesaid, in and upon the left side of the breast of the said J. N., one mortal wound of the breadth of three inches, and of the depth of six inches, of which said mortal wound the said J. N. then and there instantly died; and so, the

[1] The above refers to the *commencement* in the Outline Indictment above, No. 1, *ante*, which must be invariably used. This reference will be omitted in subsequent forms, to save space.

jurors aforesaid, upon their oath aforesaid, do say, that the said J. S. the said J. N., in manner and form aforesaid, then and there feloniously, willfully and of his malice aforethought, did kill and murder; against the peace, etc., and contrary, etc. (Arch. 405.)

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6. *Indictment for murder by shooting.* (Id.)

(*Use No.* 1 *of this head, to asterisk* [*], *omitting the words "with poison," and proceed thus:*)

in and upon one J. N. feloniously, willfully, and of his malice aforethought, did make an assault, and that the said J. S. a certain pistol, then and there loaded and charged with gunpowder, and one leaden bullet, then and there feloniously, willfully, and of his malice aforethought, did discharge and shoot off, to, against, and upon the said J. N., and that the said J. S., with the leaden bullet aforesaid, out of the pistol aforesaid, then and there by force of the gunpowder aforesaid, by the said J. S. discharged and shot off as aforesaid, the said J. N., in and upon the left breast of him, the said J. N., a little above the left pap of him, the said J. N., then and there feloniously, willfully, and of his malice aforethought, did strike, penetrate, and wound; giving to the said J. N., then and there, with the leaden bullet aforesaid so as aforesaid shot and discharged, and sent forth out of the pistol aforesaid, by the said J. S., in and upon the left breast of him, the said J. N., a little above the left pap of him, the said J. N., one mortal wound of the depth of four inches, and breadth of half an inch, of which said mortal wound the said J. N. then and there instantly died. And so the jurors aforesaid, do say, that the said J. S., the said J. N., in manner and form aforesaid, then and there feloniously, willfully, and of his malice aforethought, did kill and murder. Against the peace, etc., and contrary, etc. (See Arch. 429.)

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7. *Count for murder in some way and manner, etc., unknown.* (Id.)

That the said John W. Webster, at Boston aforesaid, in the county aforesaid, in a certain building known as the Medical

College, there situate, on the twenty-third day of November, in the year of our Lord ——, in and upon one George Parkman, feloniously, willfully, and of his malice aforethought, did make an assault; and the said George Parkman, in some way and manner, and by some means, instruments, and weapons, to the jurors unknown, did then and there feloniously, willfully, and of malice aforethought, deprive of life; so that the said George Parkman then and there died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said John W. Webster, the said George Parkman, in the manner, and by the means aforesaid, to the said jurors unknown, then and there, feloniously, willfully, and of his malice aforethought, did kill and murder; against the peace, etc., and contrary etc. (Tr. & H. Prec. 314.)

Note. — See the celebrated case of *Commonwealth* v. *Webster*, 5 Cush. 295. The above count was held sufficient, where the circumstances of the case will not admit of greater certainty in stating the means of death. In that case there were four counts in the indictment.

1. A count for murder by stabbing with a knife. 2. For murder by inflicting a blow on the head with a hammer. 3. For murder, by striking, kicking, etc., and 4, the count above given. Any one of these counts if proved, supposing it to be legally formal, was held sufficient to support the indictment. (See Tr. & H. Prec. for these counts, pp. 311–314.)

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### (*b*) Manslaughter.

*Decisions.*—*Mullen* v. *People*, 31 Ill. 444; *Reins* v. *People*, 30 id. 256; *Brennan* v. *People*, 15 id. 511; *U. S.* v. *Warner*, 4 McLean, 463; *Reg.* v. *Bagster*, 3 Cox C. C. 191. For forms see Cox C. C. app. lvii. lxxv.; for proper instructions see *Fisher* v. *People*, 23 Ill. 285.

*Limitation* — three years. *Penalty*, the jury in their verdict to fix time of confinement in the penitentiary, which may be for life or any number of years (Laws 1859, § 1, p. 125); but the term cannot be less than one year. (*Mullen* v. *People*, 31 Ill. 444.)

1. *Indictment for manslaughter by stabbing.*

(R. S. 1845, ch. 30, § 25; Purp. 362; Scates, 377.)

That J. S., late of C. in the county of C. aforesaid, on the first day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, in and upon one J. N., feloniously and willfully did make an assault, and that the said J. S. with a certain knife, the said J. S. in and upon the left side of the breast of the said J. N., then and there feloniously and willfully did strike, cut, stab and thrust, giving to the said J. N. then and there with the knife aforesaid, in and upon the left side of the breast of the said J. N. a mortal wound of the breadth of three inches, and of the depth of four inches, of which said mortal wound the said J. N. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S. the said J. N. in manner and form aforesaid, then and there feloniously and willfully did kill. Against the peace, etc.

NOTE.—Any of the forms for murder will answer for manslaughter, by omitting the words "*of his (or her) malice aforethought*" throughout, and omitting the word "murder" at end of the indictment.

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(*c*) CONCEALMENT BY MOTHER OF DEATH OF HER BASTARD CHILD.

*Decisions.*—None in Illinois Reports. An indictment for concealing the birth, etc., "*by secretly disposing of the dead body*" is bad, the mode should be shown. (*Reg.* v. *Hounsell*, 2 M. & Rob., 292.) An indictment which charged that the defendant cast and threw the dead body of the child into the soil in a certain privy, "*and did thereby then and there unlawfully dispose of the dead body of the said child, and endeavor to conceal the birth thereof*," held sufficient, the word "*thereby*" being referred as well to the endeavor as to the disposing of the body. (*Reg.* v. *Coxhead*, 1 C. & K. 623.) The indictment need not state whether the child died before or after its birth (id.), and see Arch. 435.

*Limitation*—for concealment, one year and six months. *Penalty*, in that case, imprisonment in county jail, term not exceeding one year. This concealment may amount to murder and be punished accordingly. (Crim. Code, § 43.)

1. *Indictment of mother for concealment of death of her bastard child.*

(R. S. 1845, ch. 30, § 41; Purple, 364; Scates, 379.)

That A. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, being then and there pregnant with a male child, was then and there delivered of the said male child alive, which said male child then and there instantly died, and that the said A. S. being so delivered of the said male child, did then and there unlawfully and privately endeavor to conceal the death of said child by secretly burying the dead body of said child, so that it might not come to light whether it had been murdered or not, which said child so born alive, was, by the laws of the State aforesaid, a bastard.

And the grand jurors aforesaid, selected and sworn as aforesaid, in the name and by the authority aforesaid, on their oaths aforesaid, do further present: That the said A. S., late of C. aforesaid, in the county aforesaid, on the first day of July, in the year of our Lord ——, being then and there pregnant with a male child, was then and there delivered of the said male child dead, and that the said A. S. being so delivered of the said child as aforesaid, which said child, if born alive, would, by the laws of this State, be a bastard, did then and there unlawfully and privately endeavor to conceal the death of said child, so that it might not come to light whether it had been murdered or not, by secretly disposing of the dead body of the said child.

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2. *Indictment of mother for murder by strangling her bastard child.* (Id.)

That A. S., late of C., in the county of C., single woman, on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, being pregnant with a male child, did then and there bring forth of the body of the said A. S. the said male child alive, and in secret, which said male child, so being born alive, was, by the laws of this State, a bastard, and that the said A. S. afterward, to wit, on the same day and year aforesaid, at C. aforesaid, in the county aforesaid, in and

upon the said male child, the name whereof is to the grand jurors aforesaid unknown, in the peace of the people, etc., then and there being, feloniously, willfully, and of her malice aforethought, did make an assault; and that the said A. S. did then and there feloniously, willfully, and of her malice aforethought, fix, clasp, and press both the hands of her, the said A. S., about the neck of the said male child, then and there fixed; the said male child then and there feloniously, willfully, and of her malice aforethought, did choke and strangle, of which said choking and strangling the said male child then and there instantly died; and so the jurors aforesaid, upon their oaths aforesaid, do say, that the said A. S., the aforesaid male child, in manner and form aforesaid, feloniously, willfully, and of her malice aforethought, did kill and murder; against the peace, etc., and contrary, etc. (Tr. & H. 323.)

NOTE.—The above form will illustrate other modes of secret murder by the mother of her bastard child.

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### (*d*) DUELING.

*Decisions.*—As to section 44, Criminal Code, see *Aulger* v. *The People*, 34 Ill. 486. In some States, deliberate dueling, if death ensues, is murder; in Illinois it is a high misdemeanor. See Crim. Code, § 43.

*Limitation.*—Under section 43, three years; under sections 44 and 45, one year and six months. *Penalty*, under section 43, imprisonment to labor in penitentiary for a term not less than one year, nor more than five years. Under sections 44 and 45, incapacity to any office of profit, trust, or emolument, civil or military, under the State government, and fine not to exceed $100.

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#### 1. *Indictment for fighting a duel.*

(R. S. 1845, ch. 30, § 43; Purple, 364; Scates, 379.)

That A. B., late of C., in the county of C., and State of Illinois, by a previous appointment and agreement within this State, to wit, at C. aforesaid, in the county aforesaid, in the State aforesaid, on the first day of May, in the year of our

Lord ——, with one C. D., to fight a duel, to wit, at C., aforesaid, in the county of C., aforesaid, and State of Illinois, aforesaid, did afterward, to wit, on the first day of June, in the year last aforesaid, at C., aforesaid, in the county of C., aforesaid and State of Illinois, aforesaid, fight a duel with the said C. D., and on the first day of June, in the year last aforesaid, with force and arms, at C., aforesaid, in the county of C., aforesaid, and State aforesaid, in and upon the said C. D., feloniously and willfully make an assault; and that the said A. B., a certain deadly weapon, to wit, a certain pistol (the probable consequences of fighting with which pistol, might be the death of the said A. B. or of the said C. D.), then and there charged with gunpowder, and one leaden bullet, then and there feloniously and willfully did discharge and shoot off, to, against, and upon, the said C. D.; and that the said A. B., with the leaden bullet aforesaid, then and there, by force of the gunpowder aforesaid, by the said A. B. discharged and shot out of the said pistol, as aforesaid, then and there feloniously and willfully did strike, penetrate and wound the said C. D., then and there giving to the said C. D., with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the said A. B., in and upon the right side of the belly of the said C. D., a mortal wound, of the depth of four inches and of the breadth of one inch; of which mortal wound the said C. D., on the first day of June, in the year last aforesaid, then and there instantly died. Contrary, etc., and against the peace, etc. (Tr. & H. 179.)

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2. *Indictment for challenging another to fight a duel.*

(Ib. § 44 id.)

That A. B., late of C., in the county of C., on the first day of May, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, willfully and maliciously* did write, send and deliver a certain written message to one C. D., purporting and intended to be a challenge to the said C. D. to fight a duel with and against the said A. B., with a deadly weapon, to wit, a pistol, the probable consequence of fighting with which pistol might be the death of either the

said A. B. or the said C. D., which written message is of the tenor following, that is to say (*here insert a copy of the message*); against the peace, etc., and contrary, etc. (Arch. 604.)

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3. *Indictment for accepting a challenge to fight a duel.*

(Id. § 44, id.)

(*Use No.* 2, *above, to asterisk* [*], *and proceed thus*:)

That C. D., late of, etc., on, etc., did accept a certain written message from one A. B., late of C., in the county of C., purporting and intended to be a challenge to the said C. D., to fight a duel with and against him, the said A. B., with a deadly weapon, to wit, a pistol, the probable consequence of fighting with which pistol might be the death of either the said C. D. or the said A. B.; and the said C. D., then and there, did willfully and maliciously agree to and with said A. B. to fight a duel with him, the said A. B., with a deadly weapon, to wit, a pistol, pursuant to the challenge aforesaid, which written message is of the tenor following (*here set out a copy of the message*); against the peace, etc., and contrary, etc.

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4. *Indictment for carrying a challenge to fight a duel.*

(Id. § 45, id.)

That E. F., late of C., in the county of C., on the first day of May, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did willfully and knowingly carry a written challenge from one A. B., late of C. aforesaid, in the county aforesaid, to one C. D., late of C. aforesaid, in the county aforesaid, purporting and intended to be a challenge to the said C. D. to fight a duel with and against the said A. B., with a deadly weapon, to wit, with a pistol, the probable consequence of fighting with which pistol might be the death of either the said C. D. or the said A. B., which written challenge is of the tenor following, that is to say (*here set out the written challenge correctly*); against the peace, etc., and contrary to, etc.

(*e*) Administering poison with intent to cause death.

This forms the subject of clause 1 of section 46 of the Criminal Code. The law of 1853, section 1, page 215; Purple, 391; Scates, 424; as to druggists labeling medicines sold by them, is additional legislation, but is subject of justice of peace cognizance only, and not of indictment.

*Decisions* on clause 1, section 46 of Criminal Code, none.

*Limitation*, three years. *Penalty*, penitentiary, term not less than one year, nor more than seven years.

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1. *Indictment for administering poison with intent to cause death.*

(R. S. 1845, ch. 30, § 46, clause 1; Purple, 365; Scates, 380.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, willfully and maliciously did administer to one J. N., a large quantity of a certain deadly poison, called white arsenic, to wit, two drachms of the said white arsenic, with intent then and there, and thereby feloniously, willfully and maliciously to cause the death of the said J. N.; against the peace, etc., and contrary to, etc.

And the grand jurors aforesaid, selected and sworn as aforesaid, in the name and by the authority aforesaid, on their oaths aforesaid, do further present, that the said J. S., late of C. aforesaid, in the county aforesaid, on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did willfully and maliciously cause to be taken by J. N., of the county aforesaid, a large quantity of a certain * deadly poison called (*here follow the first count to the end*).

(*If in doubt as to the description of the poison, add a third count thus:*)

(*Use 2d count above to asterisk* [*], *and proceed thus*:)

destructive substance to the grand jurors aforesaid unknown, with intent then and there, and thereby feloniously, willfully and maliciously to cause the death of the said J. N., against the peace, etc., and contrary, etc. (Arch. 439.)

(*f*) ABORTION.

This forms the subject of clause 2, of section 46, of Criminal Code. The law of 1867, pages 88, 89, is additional to the above, and provides section 1, against attempts at abortion by the use of instruments; section 2 of the above law of 1867 provides, that in case of death of the woman by such means it shall be deemed murder, and be punished accordingly.

*Decisions.*—*Armstrong* v. *People*, 37 Ill. 459, as to section 46, clause 2, above. None as to law of 1867.

*Limitation.*—As to section 46, clause 2, three years; as to section 1, law of 1867, three years; as to section 2, law of 1867, none.

*Penalty.*—Under section 46, clause 2, three years in penitentiary, and fine not over $1,000. Under section 1, law of 1867, not less than two years nor more than ten years in penitentiary; this crime is a high misdemeanor. Under section 2, law of 1867, same as murder.

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1. *Indictment for administering poison, etc., to cause miscarriage.*

(R. S. 1845, ch. 30, § 46, clause 2; Purple, 366; Scates, 381.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, feloniously and unlawfully did administer to, and cause to be taken by one A. N., she, the said A. N., then and there being pregnant with child, a large quantity of a certain noxious substance, called savin, with intent then and thereby then and there to procure the miscarriage of the said A. N.; against the peace, etc., and contrary to, etc. (Arch. 438).

NOTE.—If there be any doubt of the name of the drug, it may be prudent to state it different ways in several counts, and adding a count stating it to be "*a certain noxious substance to the grand jurors aforesaid unknown.*" (Arch. 438.)

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2. *Indictment for attempt to procure an abortion by use of an instrument.*

(Laws 1867, § 1, 88.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the

county aforesaid, feloniously and unlawfully did attempt to procure the miscarriage of one A. N., by then and there feloniously and unlawfully using a certain instrument, the name of which is to the jurors aforesaid unknown, which the said J. S. in his right hand then and there held, by then and there forcing and thrusting the instrument aforesaid into the body and womb of the said A. N., then and there feloniously and unlawfully attempting to procure the miscarriage of the said A. N.; against the peace, etc., and contrary to, etc. (Train & Heard, 10.)

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3. *Indictment for murder in attempting to produce a miscarriage.*

(Laws 1867, p. 89, § 2.)

That, before and at the time of the felony and murder hereinafter mentioned, one A. N., late of C., in the county of C. aforesaid, was pregnant with child, and that one J. S., late of same place, feloniously, willfully, and of his malice aforethought, devising, contriving, and intending feloniously, unlawfully, and willfully to cause and procure the miscarriage of the said A. N., she, the said A. N., being then and there pregnant, on the first day of July, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, in and upon the said A. N., then and there being pregnant with child, feloniously, willfully, and of his malice aforethought, did make an assault, and that the said J. S. feloniously and unlawfully then and there did attempt to procure the miscarriage of the said A. N., by then and there feloniously and unlawfully using a certain instrument, the name of which is to the jurors aforesaid unknown, which the said J. S. in his right hand then and there held, by then and there forcing and thrusting the instrument aforesaid into the body and womb of the said A. N.; the said J. S. then and there feloniously, unlawfully, willfully, and of his malice aforethought, did, in said attempt to produce the miscarriage of the said A. N., cause the said A. N. then and there instantly to die, to wit, on the day and year last aforesaid, whereby and by force of the statute in such case made and provided, the said J. S. is

deemed to have committed the crime of murder. And so the jurors aforesaid, upon their oath aforesaid do say, that the said J. S., the said A. N. in manner and form aforesaid, feloniously, willfully, and of his malice aforethought, did kill and murder; against, etc., and contrary, etc. (See Tr. & H. 305.)

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### (*g*) MAYHEM.

*Decisions.*— None in Illinois — *Commw.* v. *Newall*, 7 Mass. 244, decides that mayhem is not a felony at the common law.

*Limitation* — three years. *Penalty* — penitentiary, not less than one year, nor more than three years. *Proviso.* — If the mayhem occur in *actual fight*, on conviction, it is a high misdemeanor, punished by imprisonment in the penitentiary for a term not exceeding a year, and fine not more than $1,000. No mayhem in fights by consent, unless the maimed party in good faith declined further combat.

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#### 1. *Indictment for maiming.*

(R. S. 1845, ch. 30, § 47; Purp. 365; Scates, 381.)

That A. B., late of C., in the county of C., on the first day of July, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, the said A. B. being then and there armed with a certain dangerous weapon, to wit, a knife, with malicious intent, one C. D., then and there, to maim and disfigure, in and upon the said C. D., feloniously did make an assault, and that the said A. B., with the said knife, the nose of the said C. D., then and there feloniously and maliciously, did cut and slit with malicious intent, then and there, and thereby in manner aforesaid, the said C. D. then and there to maim and disfigure; against the peace, and contrary to, etc. (Train & Heard, 384.)

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### (*h*) RAPE.

*Decisions.*— *Barney* v. *People*, 22 Ill. 160; *Smith* v. *People*, 25 id. 17; *Reg.* v. *Christian*, C. & Mar. 187; *Reg.* v. *Folkes*, 1

Moo. C. C. 344; *Rex* v. *Gray*, 7 C. & P. 164; *Reg.* v. *Allen*, 2 Moo. C. C. 179; *Rex* v. *Warren*, 1. Russ, 686.

*Limitation* — three years. *Penalty* — penitentiary not less than one year, and may be life. This crime is infamous under section 174 of the Criminal Code.

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1. *Indictment for rape.*

(R. S. 1845, ch. 30, § 48; Purp. 366; Scates, 381.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, * in and upon one A. N., violently and feloniously did make an assault, and her, the said A. N., then and there, did ravish and carnally know, forcibly and against the will of her, the said A. N.; against the peace, etc., and contrary, etc. (Arch. 453.)

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2. *Indictment for rape on a woman child under ten years of age.* (Id.)

(*Use No.* 1, *above, to asterisk* [*], *and proceed thus:*)

in and upon one C. D., a female child under the age of ten years, to wit, of the age of nine years, feloniously did make an assault, and her, the said C. D., then and there feloniously did unlawfully and carnally know and abuse; against the peace, etc., and contrary, etc. (Arch. 483.)

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(*i*) Crime against nature.

*Decisions.* — None in Illinois. As to *Bestiality*, see *Reg.* v. *Allen* (1 Car. & Kir. 495). In *Sodomy*, the word "buggery" is essential. (2 Stark. Cr. Pl. 436.) The crime against nature is infamous under section 174 of the Criminal Code.

*Limitation* — three years. *Penalty* — penitentiary not less than one year, and may extend to life.

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1. *Indictment for sodomy.*

(R. S. 1845, ch. 30, § 50; Purp. 366; Scates, 381.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the

county aforesaid,* in and upon one J. N., then and there being, feloniously did make an assault, and then and there feloniously, wickedly, and against the order of nature, had a venereal affair with the said J. N., and then and there, feloniously and carnally knew him, the said J. N., and then and there feloniously, wickedly and against the order of nature, with the said J. N., did commit and perpetrate that detestable and abominable crime of buggery (not to be named among Christians); against the peace, etc., and contrary, etc. (Arch. 486.)

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2. *Indictment for bestiality.*

(R. S. 1845, ch. 30, § 50. Id.)

(*Use No.* 1, *above, to asterisk* [*], *and proceed thus*:)

with a certain *cow* (*or any animal*), then and there being, feloniously, wickedly and against the order of nature, had a venereal affair, and then and there feloniously, wickedly, and against the order of nature, carnally knew the said cow, and then and there feloniously, wickedly and against the order of nature did commit and perpetrate that detestable and abominable crime against nature (not to be named among Christians); against the peace, etc., and contrary to, etc. (Arch. 486.)

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3. *Another precedent for same.* (Id.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C., in the county of C., feloniously, wickedly and against the order of nature, did commit the abominable and detestable crime against nature, with a certain beast, to wit, with a cow, by then and there having carnal knowledge of the body of said cow; against the peace, etc., and contrary to, etc. (Train & Heard, 469.)

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(*j*) ASSAULTS.

A common assault is the subject of justice of the peace jurisdiction, and not indictable.

Assaults, with intent to felonies, are the subject of clause 1, section 52, Criminal Code, and are indictable.

Assaults, with intent to bodily injuries, are the subject of clause 2 same section, and are indictable.

*Decisions.*— Under clause 1, § 52. 1 Scam. 285; 2 id. 267; 3 id. 474; 19 Ill. 118; 26 id. 500–1, all relating to forms of indictment, bonds and record; and see on pleading, *Curtis* v. *People*, Breese, 197; *Curtis* v. *People*, 1 Scam. 285; *Connolly* v. *People*, 3 id. 474; *Perry* v. *People*, 14 Ill. 496; *Hopkinson* v. *People*, 18 id. 264; *Carpenter* v. *People*, 4 Scam. 197; *Beckwith* v. *People*, 26 Ill. 500.

Under clause 2, same section, *People* v. *Baughman*, 18 Ill. 152, and cases cited; *Carpenter* v. *People*, 4 Scam. 197; *Beckwith* v. *People*, 26 Ill. 500; *Sharp* v. *People*, 29 id. 464; *Severin* v. *People*, 37 id. 414; *Coughlin* v. *People*, 18 id. 267.

*Limitation.*— Under clause 1, three years. Under clause 2, eighteen months. *Penalty*, Under clause 1, penitentiary, not less than one year, nor more than fourteen years. Under clause 2, fine not less than $25 nor more than $1,000, or imprisonment in county jail not exceeding a year, or both, in the discretion of the court. (Law 1859, § 1, p. 153.)

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(*a*) Assaults with intent to felonies.

1. *Indictment for an assault with intent to murder.*

(R. S. 1845, ch. 30, § 52, clause 1; Purple, 366; Scates, 381.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, with force and arms, * in and upon one J. N., in the peace of God and of the people, etc., then and there being, with a certain dangerous weapon, to wit, with a knife, with which the said J. S. was then and there armed, feloniously, willfully, and of his malice aforethought, did make an assault, and the said J. N. in and upon the right side of the belly, between the short ribs of him the said J. N., then and there feloniously and unlawfully did stab, cut and wound with intent the said J. N., then and there with the knife aforesaid, feloniously, willfully and of his malice aforethought, the said J. N., to kill and murder; against the peace, etc., and contrary, etc. (Arch. 449.)

Note.— *The forms for indictment for murder given ante, will suggest several forms under this head.*

2. *Same, with intent to rape.* (Id.)

(*Use No.* 1, *above, to asterisk* [*], *and proceed thus:*)

in and upon one A. N. feloniously did make an assault with intent her, the said A. N., then and there feloniously to ravish and carnally know, by force and against her will; against the peace, etc., and contrary, etc.

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3. *Same, with intent to rape a woman child under ten years of age.* (Id.)

(*Use No.* 1, *above, to asterisk* [*] *and proceed thus:*)

in and upon one C. D. a female child under the age of ten years, to wit, of the age of nine years, feloniously did make an assault with intent her, the said C. D., then and there feloniously to carnally know and abuse; against, etc., contrary, etc.

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4. *Same, with intent to mayhem.* (Id.)

(*Use No.* 1, *above, to asterisk* [*] *and proceed thus:*)

the said J. S. being then and there armed with a dangerous weapon, to wit, a kinfe, in and upon one J. N. feloniously did make an assault, with the malicious intent the said J. N. then and there to maim and disfigure, by then and there feloniously and willfully cutting off the nose of the said J. N., against the peace, etc., and contrary to, etc.

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5. *Same, with intent to robbery.* (Id.)

(*Use No.* 1, *above, to asterisk* [*] *and proceed thus:*)

the said J. S. in and upon one J. N. feloniously did make an assault, and the said J. N. then and there feloniously did put in fear, with intent one gold watch of the value of one hundred dollars of the goods and chattels of the said J. N. from the person, and against the will of the said J. N., then and there feloniously, and by force and violence, to rob, steal, take and carry away; against the peace, etc., and contrary to, etc.

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6. *Same, with intent to larceny.* (Id.)

(*Use No.* 1, *above, to asterisk* [*] *and proceed thus:*)

the said J. S. in and upon one J. N. feloniously did make an assault, with intent one gold watch of the value of one hundred

dollars of the goods and chattels of the said J. N., then and there in the possession of said J. N. being found, feloniously to steal, take and carry away; against the peace, etc., and contrary to, etc.

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(*b*) Aggravated assaults.

1. *Indictment for an assault with a deadly weapon, with intent to commit bodily injury.*

(R. S. 1845, ch. 30, § 52, clause 2, id.)

(*Use No.* 1, *above, to asterisk* [*], *and proceed thus:*)

with a deadly weapon, to wit, a certain knife, upon one J. N. did then and there unlawfully make an assault with intent then and there unlawfully to inflict upon the person of the said J. N. a bodily injury, no considerable provocation then and there appearing.

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2. *Indictment for an assault with a slung shot, with intent to commit a bodily injury.* (Id.)

(*Use No.* 1, *above, to asterisk* [*], *and proceed thus:*)

with a certain knife, the same being then and there a deadly weapon, unlawfully, willfully and maliciously, did make an assault upon one J. N., with intent then and there to inflict upon the person of the said J. N. a bodily injury, where the circumstances of said assault showed an abandoned and malignant heart.

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(*k*) False imprisonment.

*Decisions.*—*Taylor* v. *Cottrell*, 16 Ill. 93; *Slomer* v. *People*, 25 id. 70; 2 Inst. 589; Cro. Car. 210; *Chinn* v. *Morris*, 2 C. & P. 361; *Pocock* v. *Moore*, Ry. &. M. N. P. 321; *Rex* v. *Smith*, 2 C. & P. 449.

*Limitation*—eighteen months. *Penalty*—fine, not over $500, or imprisonment in county jail not over one year.

1. *Indictment for false imprisonment.*

(R. S. 1845, ch. 30, § 54; Purple, 366; Scates, 382.)

That J. S., late of C., in the county of C., on the first day of July, in the year of Lord ——, at C. aforesaid, in the county aforesaid, in and upon one J. N., did make an assault, and him, the said J. N., then and there unlawfully and injuriously, and against the will of the said J. N., and also against the laws of this State, and without any legal warrant, authority, or reasonable or justifiable cause whatever, did deprive of his liberty, imprison and detain so imprisoned there, for a long space of time, to wit, for the space of ten hours then next following, and other wrongs, to the said J. N. then and there did, to the great damage of the said J. N.; against the peace, etc., and contrary to, etc. (Arch. 470.)

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(*l*) KIDNAPPING.

This head embraces sections 55, 56 and 57 of the Criminal Code; section 56 is obsolete so far as it relates to any fugitive slave law; section 57 is obsolete, slavery having been abolished. Kidnapping is infamous. See § 174.

*Decision* — *Moody* v. *People*, 20 Ill. 315. *Penalty* — penitentiary, not less than one year, nor more than seven years, for each person kidnapped, or attempted to be kidnapped.

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1. *Indictment for kidnapping.*

(R. S. 1845, ch. 30, § 56; Purple, 366; Scates, 382.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, feloniously and forcibly did steal and take one J. N., and carry him to the State of ———, against the will of the said J. N.; against the peace, etc., and contrary to, etc.

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2. *Same, without establishing a claim, etc.* (Id.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, feloniously and forcibly, and without lawful

authority did arrest one J. N. with a design him out of this State to take, he the said J. S. not having established a claim thereto according to the Laws of the United States; against the peace, etc., and contrary to, etc.

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(*m*) THREATS, STRIKES, ETC., TO PREVENT WORK AT LAWFUL BUSINESS.

(Laws 1863, p. 70, § 1.)

*Decisions*—none. *Limitation*—eighteen months. *Penalty*—*fine* not over $100. These offenses may be subject of justice of the peace jurisdiction. (See Law 1863, p. 54.)

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1. *Indictment for threats to prevent a person to work at any lawful business.*

(Laws 1863, p. 70, § 1.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully, willfully and maliciously did threaten one J. N. with bodily harm, with intent thereby, then and there unlawfully and maliciously to prevent said J. N. from working at his lawful business, on such terms as he the said J. N. saw fit; against the peace, etc., and contrary, etc.

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(*n*) COMBINATIONS TO DEPRIVE OWNERS OF LAWFUL USE OF PROPERTY, AND THREATENING EMPLOYEES, ETC.

(Laws 1863, p. 70, § 2.)

*Decisions*—none. *Limitation*—eighteen months. *Penalty*—*fine* not over $500, or county jail not over six months.

1. *Indictment for combination to deprive an owner of property of its lawful use, etc.*

That J. S., late of C., in the county of C., J. W., late of same place, and E. W. also late of same place, on the first day of July, in the year of our Lord ——, at C., aforesaid, in the county aforesaid, did among themselves unlawfully, willfully and maliciously combine, confederate and agree together * to

deprive J. N., of same place (he, the said J. N., being then the owner [*or possessor*] of a certain coal bank [*any property*] there situate, to wit, at C. aforesaid, in the county aforesaid), of the lawful use and management of the coal bank aforesaid; against the peace, etc., and contrary to, etc.

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2. *Same for combination to prevent employees from laboring, etc.* (Id.)

(*Use next preceding form to asterisk* [*], *and proceed thus:*)

to prevent J. N., an employee of one A. B., the owner (*or possessor*) of a certain coal bank there situate, to wit, at C. aforesaid, in the county aforesaid, from being employed by the said A. B., in the coal bank aforesaid, on such terms as the said J. N. might agree upon with said A. B., and that in pursuance of the combination aforesaid, the said J. S., J. W. and E. W., on said first day of July, in the year aforesaid, at C. aforesaid, in the county aforesaid, unlawfully, willfully and maliciously did threaten and suggest bodily danger to the said J. N., with intent to prevent said J. N. being employed by said A. B., on such terms as the said J. N. and said A. B. might agree upon; against the peace, etc., and contrary to, etc.

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(*o*) UNLAWFUL ENTRY OF COAL BANKS.

*Decisions*—none. *Limitations*—eighteen months. *Penalty*—under Laws 1863, page 70, § 3, fine not over $500, and county jail not over six months. Under Laws 1863, page 70, § 4, same fine or imprisonment or both.

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1. *Indictment for entering another's coal bank without permission.*

(Laws 1863, p. 70, § 3.)

That heretofore, and before the first day of July, in the year of our Lord ——, A. B., late of C., in the county of C., being owner (*or manager*) of a certain coal bank there situate, to wit, at C. aforesaid, in the county aforesaid, did prohibit one C. D. of same place from entering the coal bank aforesaid by notice

to that effect. That afterward, to wit, on the day and year aforesaid, the said C. D. did unlawfully enter the coal bank aforesaid, without the consent and permission of said A. B. owner (*manager*) aforesaid, of the coal bank aforesaid; against the peace, etc., and contrary to, etc.

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2. *Indictment for entering same, with intent to injury, etc.* (Id. § 3.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* did unlawfully and maliciously enter the coal bank of one J. N. there situate, with intent unlawfully and maliciously then and there to injure the same; against the peace, etc., and contrary to, etc.

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3. *Same, for causing an employee of a coal bank, to leave same by threats, etc.* (Id.)

(*Use No.* 2, *last above, to asterisk* [*], *and proceed thus:*) unlawfully and maliciously did threaten bodily harm to one J. N., and did then and there thereby intimidate said J. N., and then and there did thereby cause him, the said J. N., to leave his employment in the coal bank of one A. B. there situate, to wit, at C. aforesaid, in the county aforesaid; against the peace, etc., and contrary, etc.

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## SECTION 4. CRIMES AGAINST HABITATIONS.

This section embraces sections 58, 59 and 60 of the Criminal Code (and see L. 1859, p. 16, and L. 1859, p. 154, also Laws 1869, p. 4, §§ 1, 2, 3.)

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### (*a*) ARSON.

*Decisions.* — *Clark* v. *The People*, 1 Scam. 117, is now obsolete. *Arson* must be laid "feloniously, willfully and maliciously." 2 East P. C. 1033; and see in general, *Rex* v. *Turner*, 1 Moo. C. C. 239; *Commonwealth* v. *Chapman*, 5 Whar. 427; 3 Greenl. Ev. § 56; *Commw.* v. *Belton*, 5 Cush. 427; *Same* v. *Van Schaick*, 16 Mass. 105; *McLane* v. *The State*, 4 Georgia, 335, 338; 3 Greenl. Ev. § 52. Designate the injured

person correctly. *Commw.* v. *Wade*, 17 Pick. 395; *State* v. *Lyon*, 12 Conn. 487.

*Limitation* — three years. *Penalty*, under section 58 and law of 1859, section 1, page 16, penitentiary not less than one year, nor more than ten years, and if death ensues, it is murder, and punished as such. Arson is infamous, § 174. Under Laws 1869, § 1, penitentiary not less than one year, nor over ten years.

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1. *Indictment for arson at common law.*

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,† feloniously, willfully, and maliciously did set fire to* and burn a certain dwelling-house of one J. N., then and there situate; against the peace, etc. (Matthews Cr. L. 436.)

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2. *Indictment for burning a dwelling-house.*

(R. S. 1845, ch. 30, § 58; Purple, 367; Scates, 382.)

(*Use No.* 1 *to asterisk* [*], *and proceed thus:*)

the dwelling-house of J. N., there situate, and the same did thereby then and there burn and consume; against the peace, etc., contrary to, etc. (Arch. 313.)

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3. *Another form for same.* (Id.)

(*Use No.* 1 *to dagger* [†], *and proceed thus:*)

the dwelling-house of one J. N., there situate, feloniously, unlawfully, willfully, and maliciously did burn and consume; against the peace, etc., and contrary, etc.

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4. *Indictment for burning a kitchen.* (Id.)

(*Use No.* 1 *to dagger* [†], *and proceed thus:*)

feloniously, willfully, and maliciously did set fire to a kitchen of one J. N., there situate, and the same did thereby burn and consume; against, etc., and contrary, etc.

NOTE.—The statute mentions, besides "any dwelling-house, kitchen"— "office, shop, barn, stable, store-house, warehouse, malt-house, stilling-house, factory, mill, pottery, or other building, the property of any other person." The above forms will readily enable the pleader to frame the necessary indictment. § 2 of Laws of 1869 states what is sufficient to allege in the indictment.

5. *Indictment for burning a church.* (Id.)

(*Use No.* 1 *to asterisk* (*), *and proceed thus:*)

a certain church there situate, of the property of the Methodist Episcopal church (*or as the case may be*), in C. aforesaid, in the county aforesaid, and erected for public use, to wit, for the public worship of Almighty God, and same feloniously, unlawfully, willfully, and maliciously did then and there burn and consume; against the peace, etc., and contrary, etc.

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6. *Indictment for burning a court-house.* (Id.)

(*Use No.* 1 *to asterisk* [*], *and proceed thus:*)

a certain court-house, of the property of the county of C. aforesaid, in C. aforesaid, in said county situate, and erected for public use, to wit, for the transaction of the public business of the citizens of said county, feloniously, unlawfully, willfully, and maliciously did then and there burn and consume; against, etc., and contrary, etc.

NOTE.—The foregoing form will illustrate an indictment for arson of a meeting-house, school-house, state-house, work-house, jail, or other public building.

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7. *Indictment for burning a boat.*

(*Use No.* 1 *to asterisk* (*), *and proceed thus:*)

a certain boat called the Etna, the property of J. N., then and there lying and being within said county, feloniously, willfully, and maliciously did then and there burn and consume; against, etc., and contrary, etc.

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8. *Indictment for burning a bridge.* (Id.)

(*Use No.* 1 *to asterisk* [*], *and proceed thus:*)

a certain bridge erected across the waters of a certain creek, called Goose creek, in the county and State aforesaid situate, the property of the county of C. aforesaid, then and there being within the county aforesaid, of the value of fifty dollars, feloniously, unlawfully, willfully, and maliciously did then and there burn and consume; against, etc., and contrary, etc.

(*b*) ATTEMPT AT ARSON.

Under section 59 of the Criminal Code, setting fire to any of the buildings or other property mentioned in section 58, with intent to burn same, is a high misdemeanor.

*Limitation* — three years. *Penalty*—penitentiary not over two years, and fine not over $500.

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1. *Indictment for setting fire to a dwelling-house with intent, etc.* (Id. § 59, id.)

(*Use No.* 1, *Arson, above, to asterisk* [*], *and proceed thus:*)
feloniously, unlawfully, willfully, and maliciously did set fire to a dwelling-house of J. N., there situate, with intent thereby then and there feloniously, willfully, and maliciously to burn and consume the same; against, etc., and contrary, etc.

NOTE.—The foregoing precedents for arson will enable the pleader to prepare indictments under section 59.

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(*c*) ARSON WITH INTENT TO DEFRAUD AN INSURANCE COMPANY, AND OTHER PURPOSES.

The Law of 1859, section 1, page 16, "further defining arson," provides, that if any owner, lessee, or occupant of any of the kinds of property in section 58 of the Criminal Code, shall willfully and maliciously set fire to the same, with intent to burn the goods, chattels, and fixtures of any *other person*, body politic or corporation then in said building, shall be guilty of arson, and punished accordingly. See Laws 1869, p. 4, § 1.

*Limitation*, under this clause and Law of 1869—three years; and *penalty* as in section 58 above, and so of clauses 2, 3, and 4 *below*.

Clause 2 of same Law of 1859, section 1, makes it arson in same parties as in clause 1, to set fire to same building with intent to defraud any insurance company by consuming the building, or by consuming his own goods and chattels or fixtures thereon.

Same limitation and penalty.

Clause 3 of same law, section 1, makes it arson to wantonly set fire to any building, with intent to burn an adjoining building, the property of another.

Section 1 of same statute makes it murder, if any life or lives be lost in consequence of any of the burnings under that section.

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1. *Indictment for burning an insured dwelling-house.*

(L. 1859, § 1, p. 16.)

(*Use No.* 1, *of Arson to dagger* [†], *and proceed thus:*)

feloniously, willfully and maliciously did set fire to a dwelling-house therein situate, the property of the said J. S. there situate, with intent thereby, then and there to defraud a certain insurance company, called (*here name it by its corporate name*), by consuming and burning the dwelling-house aforesaid; against, etc., and contrary, etc. (Arch. 313.)

NOTE — An indictment on any of the cases in section 1, Law of 1859 above, can be readily formed from the above, by attending to the words of the statute.

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2. *Indictment for murder by arson.*

(Id. § 58, id. and L. 1859, p. 16, § 1.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, feloniously, willfully and maliciously did set fire to a certain dwelling-house, the property of said J. S., there situate, with intent to communicate fire to an adjoining house, the property of one J. N., there situate, one J. L. and M. his wife, then, to wit, at the time of committing the felony aforesaid, being in the said dwelling-house so adjoining as aforesaid.

And the jurors aforesaid, selected and sworn as aforesaid, in the name and by the authority aforesaid, on their oaths aforesaid, do further present: That, afterward, to wit, on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, by means of the said setting fire to, and burning of the dwelling-house aforesaid, of the said J. S., there situate, by the said J. S., a certain house adjoining thereto, the property of one J. N., there situate, wherein the said J. L. and M., his wife, then and there were, the said J. L. and M., his wife, then and there so being in said dwelling-house, were then and there burnt and consumed, and of the burning and consuming aforesaid died, to wit, on the third day of

August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid. And so the jurors aforesaid upon their oath aforesaid, do say, that by force of the statute in such case made and provided, the said J. S., in the manner and form aforesaid feloniously, willfully and of his malice aforethought, the said J. L., and M., his wife, at C. aforesaid, in the county aforesaid, did kill and murder; against, etc., and contrary, etc.

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### (*d*) BURGLARY.

This is the subject of section 60, of the Criminal Code, and see Laws of 1869, p. 190, § 1.

*Decisions.*—None in Illinois. For burglary in general, see 1 Hale P. C. 546; Wilmot's Law of Burglary. It must be in the night. *Thomas* v. *State*, 5 How. (Miss.) 20; *State* v. *Wilson*, Coxe, 439, 440. Precise hour not necessary. *Commw.* v. *Williams*, 2 Cush. 582. Night is between twilight in evening and that of the morning. *State* v. *Bancroft*, 10 N. H. 105. *Feloniously* essential. 2 Hale P. C. 184. Name of owner must be accurate. *Commw.* v. *Williams*, 2 Cush. 582. The place in dwelling-house. *Commw.* v. *Alwell*, 7 Mass. 245. With intent. 1 Hale P. C. 549. Different intents. *Rex* v. *Thompson*, 2 East P. C. 515.

*Limitation* — three years. *Penalty* — penitentiary, not less than one year, nor more than ten years. This crime is infamous. (Criminal Code, § 174.)

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1. *Indictment for burglary and assault with intent to murder.*

(R. S. 1845, ch. 30, § 60; Purple, 367; Scates, 383.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at the hour of ten o'clock in the night of the same day, at C. aforesaid, in the county aforesaid, † the dwelling-house of one J. N., there situate, willfully, maliciously and forcibly, did break and enter, * with intent him the said J. N., then and there, feloniously, willfully, and of his malice aforethought to kill and murder, contrary to the form of the statute in such case made and pro-

vided, and against the peace and dignity of the people of the State of Illinois.

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2. *Same with intent to rob.* (Id.)

(*Use No.* 1 *to asterisk* [*], *and proceed thus:*)

with intent from the person and against the will of the said J. N., then and there feloniously, and by force and violence, one gold watch, of the value of one hundred dollars, of the goods and chattels of the said J. N., to steal, take and carry away; against, etc., and contrary, etc.

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3. *Same with intent to rape.* (Id.)

(*As in No.* 2, *above, and proceed thus:*)

with intent, her, the said A. N. violently and against her will, feloniously to ravish and carnally know; against, etc., and contrary, etc.

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4. *Count for larceny.*

And the jurors aforesaid, upon their oaths aforesaid do further say that the said J. S. in the said dwelling-house aforesaid in the night-time of the —— day of ——, in the year of our Lord ——, at the county of —— aforesaid, with a certain hatchet, which he, the said J. S., then and there in his right hand had held, did then and there unlawfully, feloniously and maliciously make an assault upon the said J. N. with intent then and there unlawfully, feloniously and maliciously the said J. N. to kill and murder.

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5. *Same with intent to larceny.* (Id.)

(*Use No.* 1 *to* * *and proceed thus:*)

with intent, the goods and chattels of the said J. N., in the said dwelling-house then and there being, feloniously to steal, take and carry away; against, etc., and contrary, etc.

NOTE.—Section 60, Criminal Code, makes the offense complete where the burglary is with the intent to commit murder, etc. The burglary and the actual murder may be joined in one indictment, the above section 60 does not alter the common law in this respect.

6. *Indictment for burglary and murder.*

(*Use No.* 1 *to* * *and proceed thus:*)

and that the said J. S., then and there in the said dwelling-house, in and upon the said J. N. in the said dwelling-house, then and there being, feloniously and maliciously did make an assault, and in and upon the said J. N. feloniously, willfully, and of his malice aforethought, with a certain knife, the said J. N. in and upon the left side of the breast of the said J. N., then and there feloniously, willfully, and of his malice aforethought, did strike, cut, stab, and thrust, giving to the said J. N., then and there with the knife aforesaid, in and upon the left side of the breast of the said J. N., one mortal wound of the length of one inch and of the depth of three inches, of which mortal wound the said J. N. then and there instantly died. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said J. S. the said J. N., in manner and form aforesaid, then and there feloniously, willfully, and of his malice aforethought, did kill and murder; against, etc. (Arch. 405.)

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7. *Indictment for burglary without breaking in, and for assault with intent to murder.* (Id.)

(*Use No.* 1 *to* [†], *and proceed thus:*)

the dwelling-house of one J. N. there situate, willfully and maliciously did enter through a window of the said dwelling-house, the said window being open, in and upon the said J. N., in the said dwelling-house then and there being, feloniously and burglariously did make an assault, with intent the said J. N. then and there feloniously, willfully, and of his malice aforethought, to kill and murder; against, etc., and contrary, etc.

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(*e*) BURGLARY OF SCHOOL-HOUSE AND RAILROAD CARS.

The law of 1859, page 154, creates this offense, and makes it burglary to break and enter a school-house, or freight or passenger railroad car, with intent to rob or commit felony.

*Decisions* — none.

*Limitation* — three years. *Penalty* — penitentiary, not less than one year nor more than ten years. This crime is infamous. (See § 174.)

---

1. *Indictment for burglary of a school-house with intent to rob.* (Law 1859, p. 154, § 3.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, about the hour of ten o'clock in the night of the same day, at C. aforesaid, in the county aforesaid,* a certain school-house there situate, the property of (*name the owner*), and erected for public use, to wit, the education of the children of the inhabitants of C. aforesaid, then and there maliciously, burglariously, willfully and forcibly did break and enter into, with intent feloniously to rob, steal, take, and carry away the goods and chattels of said (*owner*); against, etc., contrary, etc.

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2. *Indictment for burglary in railroad freight car.* (Id.)

(*Use next preceding form to* *, *and go on thus:*)

a certain railroad car used for transportation of freight, then and there being, the property of (*name the railroad company*), then and there maliciously, burglariously, willfully and forcibly did break and enter into, with intent then and there, in said railroad freight car, to rob, steal, take, and carry away the goods and chattels of said (*railroad company*), therein then and there being; against, etc., and contrary, etc.

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### Section 5. Crimes against property.

This section forms division VII of the Criminal Code, sections 61–72, and comprises the statutes passed subsequently.

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### (*a*) Robbery.

*Decisions.* — None in Illinois. The indictment must aver taking from the person by violence, or putting in fear, and all

the averments in larceny. *Commonwealth* v. *Clifford*, 8 Cush. 215. The name of the party injured, if known, must be stated, and that the articles were his property, or of another, and taken by defendant. *Rex* v. *Turner*, 1 Leach C. C. 536; 8 Cush. 215. Where the statute is general, as in Illinois, at or near the highway need not be alleged. *Rex* v. *Johnston*, 2 East P. C. 786.

*Limitation*—three years. *Penalty*—penitentiary, not less than one, nor more than fourteen years. This crime is infamous under section 174.

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1. *Indictment for robbery at common law.*

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* in and upon one J. N., feloniously did make an assault, and the said J. N. in bodily fear, and danger of his life, then and there feloniously did put, and one gold watch of the value of one hundred dollars, of the goods and chattels of the said J. N., from the person and against the will of the said J. N., then and there feloniously and violently did rob, steal, take and carry away;† against the peace, etc., and contrary, etc.

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2. *Indictment for robbery with violence.*

(R. S. 1845, ch. 30, § 61; Purp. 368; Scates, 383.)

(*Use No.* 1 *to* †, *and go on thus:*)

and that the said J. S. immediately before he so robbed the said J. N. as aforesaid, him, the said J. S., feloniously did strike and beat; against, etc., and contrary, etc.

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3. *Same for robbery, not being armed.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

in and upon one J. N. feloniously did make an assault, and the said J. N., then and there, did intimidate and put in fear, and one gold watch of the value of one hundred dollars, of the goods and chattels of the said J. N., from the person, and against the will of the said J. N., then and there, feloniously,

and by force and violence did rob, steal, take and carry away; against, etc., and contrary, etc.

NOTE. — An indictment for robbery by two or more persons in company, will be the same as against an individual, except, that it should charge that the defendants together robbed; if one only be arrested, he must be charged by name, "and a certain other person (or certain other persons) to the jurors aforesaid unknown."

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(*b*) LARCENY.

This is the subject of section 62 of the Criminal Code, and of subsequent legislation, namely: Laws 1859, p. 126, § 3; id. 1865, p. 106, §§ 1, 2, 3, 4; id. 1867, March 5, p. 90, § 1; id. June 28, p. 37, § 1; id. 1869, p. 22, also p. 69, § 28, also p. 190, §§ 1, 5, 6 and 7.

*Decisions.* — *Tyler* v. *People*, Bre. 227; *Lane* v. *People*, 5 Gilm. 305; *Farrell* v. *People*, 16 Ill. 506; *Welsh* v. *People*, 17 id. 339; *Barnes* v. *People*, 18 id. 53; *Hildreth* v. *People*, 32 id. 36; *Baldwin* v. *People*, 1 Scam. 304; *Jones* v. *People*, 12 Ill. 259; *Conkwright* v. *People*, 35 id. 204; *Baxter* v *People*, 3 Gilm. 383; *Monoughan* v. *People*, 24 Ill. 340; *Myers* v. *People*, 26 id. 173; *Highland* v. *People*, 1 Scam. 392; *Sawyer* v. *People*, 3 Gilm. 53; *Arnold* v. *Ludlam*, 38 Ill. 190; *People* v. *Jackson*, 8 Barb. 637; *Commonwealth* v. *James*, 1 Pick. 375; *State* v. *Clark*, 8 Ired. 226; *State* v. *Logan*, 1 Mo. 377; *State* v. *Dowell*, 3 Gill & Johns. 310; *State* v. *Brown*, 1 Dever, 137.

The above will suffice, the decisions are very numerous.

*Limitation.* — Three years, when the value of the stolen property is over $15; eighteen months, when under. Second convictions, three years (Law 1867, June 28, § 1, p. 37, extra session), but seven years bars an indictment found, from time of finding. *Penalty.* — When over $15, penitentiary, not less than one nor more than ten years; county jail, not over one year, and fine not over $100, when less than $15. *Second conviction* in larceny, when over eighteen years of age, in penitentiary, not over three years. Under Laws of 1869, p. 22, same as above; under id. p. 191, § 1, county jail or penitentiary not over five years. Sections 5 and 6, same as larceny; § 7, county jail not over one year or fine not over $1000, in discretion of the court.

This crime is infamous under section 174 Criminal Code.

1. *Indictment for simple larceny at common law.*

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C., aforesaid, in the county aforesaid,* three pairs of shoes of the value of six dollars, one shirt of the value of two dollars, and one waistcoat of the value of three dollars, of the goods and chattels of one J. N., then and there in the possession of the said J. N., being found, feloniously did steal, take and carry away; against, etc. (Arch. 169.)

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2. *Indictment for larceny from the person.*

(R. S. 1845, ch. 30, § 62; Purp. 368; Scates, 383; Laws of 1869, p. 190, § 1.)

(*Use No.* 1 *to* *, *and go on thus:*)

one gold watch of the value of one hundred dollars, of the goods and chattels of one J. N., then and there, from the person of the said J. N., feloniously did privately steal, take and carry away; against, etc., and contrary, etc.

---

3. *Same for larceny in a dwelling-house in the day-time.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

one gold watch of the value of one hundred dollars, of the goods and chattels of one J. N., in the dwelling-house of the said J. N., there situate, in the possession of said J. N., then and there being, did then and there, in the said dwelling-house, in the day-time, feloniously steal, take and carry away; against, etc., and contrary, etc. (Train & Heard, 346.)

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4. *Same for stealing a deed of real estate.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain paper partly written and partly printed, the property of J. N., being part of the means and muniments of the title of said J. N., to certain real estate, in said county situate, known and described as (*here describe the real estate*), in which said real estate the said J. N., then and there had and hath a personal interest, then and there being found, then and there unlawfully and feloniously did steal, take and carry away; against, etc., and contrary, etc.

(*A second count may be added, more particularly describing the instrument, thus:*)

a certain other paper, partly written and partly printed, containing a quitclaim deed, between A. B. of the one part, and C. D. of the other part, the property of J. N., being part of the means and (*follow the first count to the end, the value need not be stated*). Arch. 204.)

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5. *Same for larceny of a promissory note.* (Id.)

(*Use No.* 1 *to asterisk* [*], *and go on thus*:)

one promissory note for the payment of fifty dollars, made by E. F., and payable to the order of the said J. N., in the possession of the said J. N. then and there being, did then and there feloniously steal, take and carry away; against, etc., and contrary, etc.

Note. — The above will enable the pleader to draw indictments for simple larcenies under section 62. Compound and constructive larcenies will be noticed under their proper section of the Criminal Code. The larcenies under Laws of 1869, p. 190, §§ 1, 5, 6 and 7, can be readily drawn from the above.

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6. *Same for stealing a mare.*

(Law 1865, p. 106, § 1.)

(*Use No.* 1 *to* *, *and go on thus:*)

one mare (*horse, mare, colt, mule or ass*), of the value of fifty dollars, of the goods and chattels of one J. N. then and there being, feloniously did steal, take and carry away; against, etc., and contrary, etc.

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(*c*) Receiving stolen goods.

This is the subject of sections 63 and 64 of the Criminal Code.

*Decisions.* — *Sawyer* v. *People*, 3 Gilm. 53; *Jupitz* v. *People*, 34 Ill. 526; *McDonald* v. *Brown*, 16 id. 32; *Newkirk* v. *Dalton*, 27 Id. 413, and cases cited; *State* v. *Murphy*, 6 Ala. 848; *State* v. *Nelson*, 29 Me. 329; *Swaggerty* v. *State*, 9 Yerg. 338; *Hampton* v. *State*, 8 Humph. 69.

*Limitation* — according to value of property stolen; when over $5, three years; when under $5, eighteen months. *Penalty* under section 63 — when over $5, penitentiary, not less

than one year, nor over ten years. Under section 65 — when *less than* $5, in county jail, not over three months, and fine not over $50.

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1. *Indictment for receiving stolen goods.*

(R. S. 1845, ch. 30, § 63; Purp. 368; Scates, 383.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C., aforesaid, in the county aforesaid, for his own gain, then and there did feloniously buy of one J. N.,* one piece of broadcloth of the value of fifty dollars, of the goods and chattels of one A. B., by the said J. N. then lately before feloniously stolen, taken and carried away, he, the said J. S., at the time he so bought the said piece of broadcloth, well knowing the said piece of broadcloth to have been feloniously stolen, taken and carried away; against, etc., and contrary, etc.

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2. *Same for receiving stolen goods obtained by robbery.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

one gold watch of the value of one hundred dollars, of the goods and chattels of one A. B., then lately before feloniously robbed, stolen, taken and carried away by the said J. N. from the person and against the will of the said A. B. by force, he, the said J. S., well knowing the said gold watch to have been feloniously and by force robbed, stolen, taken and carried away; against, etc., and contrary, etc.

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3. *Same for receiving goods obtained by burglary.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

one gold watch of the value of one hundred dollars, and one silver tankard of the value of forty dollars, of the goods and chattels of one A. B., by the said J. N. then lately before feloniously and burglariously stolen from the dwelling-house of the said A. B. there situate, he, the said J. S., well knowing the said gold watch and silver tankard to have been feloniously and burglariously stolen, taken and carried away; against, etc., and contrary, etc.

(*d*) Altering mark and brands on animals.

*Decisions.* — *Arnold* v. *Ludlam*, 38 Ill. 190.

*Limitation* — according to the value of the property; *when over* $5, penitentiary, not less than one year, nor more than three years; *when less* than $5, in county jail not over three months, and fine not over $50.

1. *Indictment for branding a mare, with intent to steal same.* (R. S. 1845, ch. 30, § 65; Purp. 368; Scates, 383.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* did feloniously brand (*or* "*mark*") a certain bay mare, the property of one J. N., with intent thereby feloniously to steal, take, and carry away the same; against, etc., and contrary, etc.

2. *Same for altering a brand to prevent identification.* (Ib.)

(*Use No.* 1 *to asterisk* [*], *and proceed thus:*)

the brand (*or* "*mark*") of one cow, the property of one J. N., did feloniously alter (*or* "*deface*"), with intent feloniously to prevent the identification of said cow by the said J. N., then and there being the owner thereof; against, etc., and contrary, etc.

(*e*) Embezzlement by public officers.

This forms the subject of section 66 of the Criminal Code, and embraces State and county officers, and officers of any corporate body. Under Revised Statutes, 1845, section 58, page 141, Purple, 316, Scates, 644, it is the duty of the attorney-general to enforce this law in his district, and to instruct State's attorneys of the other districts to enforce same, as to public money. See Laws of 1869, p. 69, § 28, Insurance Law.

*Decisions.*—None in Illinois. As to form of indictment, see *Commonwealth* v. *Simpson*, 9 Metc. 138; *Same* v. *Weyman*, 8 id. 247; *Same* v. *Harney*, 10 id. 426; *Bullock* v. *State*, 10 Ga. 47.

*Limitation* — three years. *Penalty* — penitentiary not less than one year, nor over ten years.

1. *Indictment for embezzlement by county treasurer.* (R. S. 1845, ch. 30, § 66; Purp. 368; Scates, 383.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the

county aforesaid, was treasurer of the said county of C., and as such treasurer was intrusted with, and had charge and custody of certain money belonging to, and being the property of said county, that is to say, one thousand dollars of the current coin of the United States, and then and there did feloniously and fraudulently embezzle, steal, take and carry away the said sum of one thousand dollars, so in his charge and custody as aforesaid; against, etc., and contrary, etc.

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2. *Indictment for embezzlement by president and cashier of a bank.* (Id.)

That J. S., late of C., in the county of C., and J. N., of the same place, on the first day of April, in the year of our Lord ——, at C., aforesaid, in the county aforesaid, the said J. S., then and there being one of the directors and president of the Phœnix bank, a corporation then and there duly and legally established, organized and existing under and by virtue of the laws of said State as an incorporated bank, and the said J. N., then and there being cashier of the said bank, did by virtue of their said respective offices and employment, and while the said J. S. and J. N. were severally employed in their said respective offices, have received and taken into their possession certain money to a large amount, to wit, to the amount and sum of two hundred and twenty thousand dollars, and of the value of two hundred and twenty thousand dollars of the goods and chattels, property and moneys of the said president, directors and company of the Phœnix bank, in their banking house there situate being; and the said money, then and there unlawfully, fraudulently and feloniously did embezzle in the banking house aforesaid. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said J. S. and J. N., then and there, in manner and form aforesaid, the aforesaid money, of the goods, chattels, property and moneys of the said president, directors and company of the Phœnix bank, feloniously did steal, take and carry away in the banking house aforesaid; against, etc., and contrary, etc. (See Train & Heard, 187, and *Commonwealth* v. *Weyman*, 8 Metc. 247.)

(*f*) Defalcation of public officers.

This is the subject of section 67 of the Criminal Code, and embraces persons lawfully intrusted to collect, disburse, receive or safely keep State funds, State school funds, county or township school funds, county funds, canal, turnpike or railroad funds of the State or any county, or any fund for improvement of public roads or waters, or any fund by law established for public purposes.

The crime consists in failing or refusing to pay over undisbursed and collected funds, when required by law, on demand made by the proper official successor.

*Decisions.*—None in Illinois.

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1. *Indictment of county collector for failing to pay over, etc.*

(R. S. 1845, ch. 30, § 67; Purp. 369; Scates, 384.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, was collector of the county of C. aforesaid, intrusted by law to collect the revenue belonging to the said county, and there and then had collected and received one thousand dollars, current money of the United States, for and on account of the revenue of said county; that the said J. S., not regarding his duty as such collector, but afterward, on the —— day of ——, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, demand for the payment of the said money having been duly made by the treasurer of said county, the said J. S. then and there being required by law to pay over the said money to the said treasurer, and the said treasurer being then and there the officer and person to whom such payment ought by law to be made, fraudulently and unlawfully failed (*or "refused"*) to pay over the said money to the said treasurer; against, etc., and contrary, etc.

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(*g*) Fraudulent and malicious destruction of deeds, etc.

This is the subject of section 68 of the Criminal Code.

*Decisions.*— *Wright* v. *People*, Bre. 66.

*Limitation*—three years. *Penalty*—penitentiary, not less than one year, nor more than five years.

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1. *Indictment for burning a bond.*

(R. S. 1845, ch. 30, § 68; Purp. 369; Scates, 384.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did feloniously, fraudulently, (*or maliciously*) burn (*or "tear," etc.*) a bond (*or "deed," etc.*) for securing the payment of the sum of one hundred dollars, executed by G. H. to one J. N., the property of said J. N., with intent to defraud, prejudice and injure the said J. N.; against, etc., and contrary, etc.

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(*h*) ALTERING OR REMOVING LANDMARK.

This forms the subject of section 69 of the Criminal Code.

*Decisions*—none in Illinois.

*Limitation*—eighteen months. *Penalty*—fine not over $100, or county jail for a term not over three months. This offense may be subject of justice of peace cognizance. (Law 1863, p. 54.)

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1. *Indictment for removing landmark.*

(R. S. 1845, ch. 30, § 69; Purp. 369; Scates, 384.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did knowingly, maliciously and fraudulently cut, fell and remove a certain elm tree, being a boundary tree, the property of J. N., then and there growing on land of said J. N., situate in said county, which said elm tree, then and there as a boundary tree of the land of said J. N., was generally allowed and received, to the wrong of the said J. N.; against, etc., and contrary to, etc.

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(*i*) INJURING TREES ON STATE LANDS.

This is the subject of a law of 1851, section 1, page 6. The court is directed to charge the grand jury on this act. (Id. § 3.)

*Decisions.*—1 Gilm. 553; 4 id. 307.

*Limitation*—eighteen months. *Penalty*—not less than $5, nor more than $10 for every tree, etc., cut, and commitment to county jail of convicted party until fine and costs be paid.

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1. *Indictment for willful trespass on State land.*

(Law 1851, p. 6, § 1; Purp. 370; Scates, 416.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully, willfully and knowingly, did, then and there, cut, fell and destroy a certain oak tree (*or* "*sapling*") growing on land, the property of the people of the State of Illinois, there situate, to wit, at C. aforesaid, in the county aforesaid, and known and described as follows, to wit (*here describe the land by its numbers*); against, etc., and contrary, etc.

N. B.—*Add counts for each tree or sapling cut.*

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(*j*) Willful trespass on land of corporation or any person.

This is the subject of a law of 1851, page 7, section 1.

*Decisions*—none in Illinois.

*Limitation*—eighteen months. *Penalty*—fine not less than $10, nor more than $100, or county jail not over three months, in discretion of the court, and commitment of party convicted until fine and costs are paid.

The injured party may elect civil action for trespass, but an indictment bars the civil remedy.

This act does not apply to travelers or marketers.

The offense may be tried by justice of the peace. (Law 1863, p. 54.)

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1. *Indictment for willful trespass on land of another person.*

(Law 1851, p. 7, § 1; Purp. 371; Scates, 417.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the

county aforesaid, unlawfully, knowingly, willfully and maliciously did, then and there, cut, fell and destroy one oak tree (*or* "*sapling*"), the property of J. N., then and there growing on land of said J. N. there situate, and known and described as follows, to wit (*here describe the land*), without the consent of said J. N. so being owner of the land aforesaid, the said J. S. then and there having no color of title in good faith to the land aforesaid, to the injury of the said J. N.; against, etc., and contrary, etc.

NOTE.—*The above can be readily altered to apply to any corporation, by inserting its corporate name, instead of that of J. N.*

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(*k*) WILLFUL TRESPASS ON FRUIT ORCHARDS, ETC.

This is the subject of a law of 1861, page 125, section 1.

*Decisions*—none.

*Limitation*—eighteen months. *Penalty*—fine not less than $10, nor more than $50, and may be imprisonment in the county jail for not over 20 days.

This act relates to the offense of picking, destroying and carrying away fruit *only*. The offense may be tried by a justice of the peace. (Law 1863, p. 54.)

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1. *Indictment for willful trespass in picking fruit, etc., in orchard.*

(Law 1861, p. 125, § 1.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did, then and there, unlawfully, knowingly, willfully and maliciously enter the inclosure of J. N. there situate, and without leave of said J. N., then and there being owner of the inclosure aforesaid, did unlawfully, knowingly and willfully, and without such leave as aforesaid, pick and carry away apples, the fruit of an apple tree in the inclosure aforesaid, then and there growing, to the injury of said J. N.; against, etc., and contrary, etc.

NOTE.—*The statute includes any kind of fruit.*

(*l*) Willful trespass on ornamental or fruit trees and bushes.

This is the subject of a law of 1865, page 129, section 1.

*Decisions*—none.

*Limitation*—eighteen months. *Penalty*—fine not over $500, or county jail not over three months, or both, in discretion of the court, and liability to double amount of damages to party injured.

This offense embraces cutting down, rooting and destroying fruit or ornamental trees, cultivated roots, plants, etc., growing on land of another. It also applies to injuring and destroying fruit or ornamental trees, or shrubbery, in a street, lane or alley, or public grounds in any city or incorporated town, the party not having lawful authority.

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1. *Indictment for willful trespass on a shade and ornamental tree.*

(Laws 1865, p. 129, § 1.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* did unlawfully, willfully and maliciously cut down and destroy a certain elm tree of the value of ten dollars, the property of J. N., then and there growing on land of said J. N., there situate for shade and ornament, the said J. S. then and there having no lawful authority so to do; against, etc., and contrary, etc.

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2. *Same for willful trespass on a tree growing on a street in a city.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain elm tree of the value of ten dollars, of the property of the "city of C." (*naming the city*), then and there standing and growing for shade and ornament, on "Broadway," a street in said city of C., then and there did unlawfully, willfully and maliciously cut down and destroy, without lawful authority so to do; against, etc., and contrary, etc.

Note.—*The above will sufficiently guide the pleader as to offenses under this statute.*

(*m*) WILLFUL TRESPASS ON FRUIT TREES.

This is the subject of a law of 1865, page 129, section 1; it is an extension of the act of 1861, page 125, section 1 above, and remedies a defect in the act of 1861, extending the offense to "*any part or portion of the fruit of any apple tree*," *etc.*; the act of 1861 implying taking or injuring the whole of the fruit of any apple tree, etc.

*Decisions* — none.

*Limitation* — eighteen months. *Penalty* — the same as the act of 1861. (See *ante*.)

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6. *Indictment for willful trespass on fruit trees.*

(Law 1865, p. 129, § 1.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully, knowingly and willfully did, then and there, enter the inclosure of J. N., there situate, and without the leave of said J. N., owner of said inclosure, unlawfully, knowingly and willfully pick and carry away apples, part of the fruit of an apple tree in said inclosure growing, to the injury of said J. N.; against, etc., and contrary, etc.

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(*n*) EMBEZZLEMENT BY CLERK, ETC., DEEMED LARCENY.

This is the subject of section 70 of Criminal Code; and see Laws of 1869, p. 69, § 28.

*Decisions.*—None in Illinois. See *Commonwealth* v. *Libby*, 11 Metc. 64; *People* v. *Allen*, 5 Denio, 76; *Rex* v. *Hodgson*, 3 Car. & P. 422.

*Limitation* — same as in larceny. *Penalty* — same as in larceny.

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1. *Indictment against embezzling clerk for larceny.*

(R. S. 1845, ch. 30, § 70; Purp. 370; Scates, 385.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, being then and there the clerk to J. N., did, then and there, by virtue of his said employment, have, re-

ceive and take into his possession certain money to a large amount, to wit, to the amount of one hundred dollars, and of the value of one hundred dollars of the property and moneys of the said J. N., the said J. S.'s employer, and the said J. S. the said money then and there feloniously did embezzle and fraudulently convert to his own use, without the consent of the said J. N., the said J. S.'s employer, whereby and by force of the statute in such case made and provided, the said J. S. is deemed to have committed the crime of larceny; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S., then and there, in manner and form aforesaid, the said money of the property and moneys of the said J. N., the said J. S.'s said employer, from the said J. N., did feloniously steal, take and carry away; against, etc., and contrary, etc. (Arch. 275; Train & Heard, 189.)

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(*o*) Frauds and embezzlements by railroad employees.

This is the subject of a law of 1859, page 154, section 2.

*Decisions*—none.

*Limitation*—three years. *Penalty*—penitentiary, one year.

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1. *Indictment for fraudulent neglect to cancel railroad ticket, with intent to defraud railroad company.*

(Law 1859, p. 154, § 2.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, being then and there employed as a clerk by the Illinois Central Railroad company, incorporated as such railroad company by the laws of this State, and while he was so employed, did, then and there, receive, take and have a ticket of said railroad company of the value of twenty dollars, the property of said railroad company then and there being,* and which railroad ticket it was the duty of said J. S., as such clerk, to cancel, the same having been already used and charged to said railroad company, the said J. S. did, then and there, fraudulently and unlawfully neglect to cancel, with the feloni-

ous and fraudulent intent to permit said railroad ticket to be again used in fraud of said railroad company; against, etc., and contrary, etc.

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2. *Same for embezzling railroad ticket.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

the said J. S. the said railroad ticket, then and there, did embezzle and fraudulently convert the same to his own use, without the consent of the said Illinois Central Railroad company, the said J. S.'s employers, and the said railroad ticket of the property of the said Illinois Central Railrad company, the said J. S.'s employer, did then and there feloniously steal, take and carry away; against, etc., and contrary, etc.

NOTE.—An indictment for larceny will lie also, so also for fraudulent stamping, printing or signing a ticket or coupon, and also for fraudulent sale, or circulating same. The above forms will suffice.

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(*p*) LARCENY BY BAILEE.

This is the subject of section 71 of the Criminal Code.

*Decisions.*—None in Illinois. At the common law, carriers for hire cannot commit larceny. *Commonwealth* v. *Brown*, 4 Mass. 599. This rule is changed by statute in several States, for example, Maine and Massachusetts. *State* v. *Haskell*, 33 Maine, 127. On this there is in Illinois no special statute, but see *Welch* v. *People*, 17 Ill. 339, and *Barnes* v. *People*, 18 id. 53. And see as to larceny by bailee, Arch. 189–191.

*Limitation*— as in larceny. *Penalty*— as in larceny.

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1. *Indictment against bailee for larceny.*

(R. S. 1845, ch. 30, § 71; Purp. 370; Scates, 385.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* one gold watch of the value of one hundred dollars, of the goods and chattels of one J. N. then and there found, intrusted to the said J. S. by the said J. N. for safe keeping, the said J. S., then and there, did fraudulently and

feloniously convert to his, the said J. N.'s, own use, with intent feloniously to steal, take and carry away the same, whereby and by force of the statute in such case made and provided, the said J. S. is deemed to have committed the crime of larceny; and so the jurors aforesaid, upon their oaths aforesaid, do say, that the said J. S., then and there, in manner and form aforesaid, the said gold watch of the goods and chattels of the said J. N. feloniously did steal, take and carry away; against, etc., and contrary, etc.

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(*q*) Larceny by Lodger.

This offense is the subject of section 72 of the Criminal Code.

*Decisions*—none in Illinois.

*Limitation*—as in larceny. *Penalty*—as in larceny.

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1. *Indictment for larceny by lodger.*

(R. S. 1845, ch. 30, § 72; Purp. 370; Scates, 385.)

(*Use the next preceding form to *, and go on thus:*)

one feather bed of the value of forty dollars, of the goods and chattels of J. N., in a certain room in the dwelling-house of said J. N. there situate being found, which feather bed the said J. S. had the use of in said room as lodger therein with said J. N., the said J. S. then and there did fraudulently and feloniously convert to his, the said J. S.'s, own use, with intent feloniously to steal, take and carry away the same (*use next preceding form from dagger* [†] *to end, but substituting the words "feather bed" for the words "gold watch"*).

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(*r*) Fraudulent sale, etc., of mortgaged property.

This forms the subject of a law of 1861, page 174, section 1.

*Decisions*—none in Illinois.

*Penalty*—fine not less than double the value of the property, and county jail not over a year, one or both, at discretion of court, and commitment until fine and costs be paid.

1. *Indictment against mortgagor of personal property for sale thereof without consent of mortgagee.*

(Law 1861, p. 174, § 1.)

That J. S., of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did convey to one J. N., of same place, by chattel mortgage, certain articles of personal property of the goods and chattels of said J. S., to wit (*here state them as in mortgage*), to secure the said J. N. the payment of the sum of one hundred dollars on a certain day therein named, to wit, the first day of August, in the year aforesaid; that afterward, to wit, on the first day of July aforesaid, and while the lien created by the mortgage aforesaid was still in existence and force, the said J. S., then and there, feloniously, unlawfully and fraudulently did sell said mortgaged property, of the value of (*here state same*), without the written consent of said J. N., the mortgagee thereof; against, etc., and contrary, etc.

NOTE. — The above form can be altered to suit the mode of disturbing the mortgage lien, such as "transferring, concealing," etc.

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(*s*) WILLFUL TRESPASSES ON RAILROADS.

This is the subject of a law of 1853, page 217, sections 1, 2 and 3.

*Decisions.* — None in Illinois. See *Reg.* v. *Holroyd*, 2 M. & Rob. 339, and *Reg.* v. *Pargeter*, 3 Cox C. C. C. 191.

*Limitation* — three years, under sections 1 and 2; under section 3, the same as in murder. *Penalty* — under section 1, in penitentiary, not less than one, nor over five years; under section 2, in same, not less than three years, nor more than ten years; under section 3, same as in murder.

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1. *Indictment for obstructing railroad track, with intent to injure, etc.*

(Law 1853, p. 217, § 1; Purp. 371; Scates, 417.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the

county aforesaid, with force and arms,† feloniously, willfully and maliciously contriving and intending the engine and carriages of the Illinois Central Railroad company (*any railroad*), then and there lawfully passing on and along the railroad of said company there located and situate,* to obstruct, with intent then and there the safety of divers persons (*or property*) then and there lawfully riding, passing and being conveyed over and along said railroad, at C. aforesaid, in the county aforesaid, in and upon the engines and carriages aforesaid to endanger, did, on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, feloniously, willfully and maliciously place and put upon, and across said railroad there situate, one iron rail, whereby the said engines and carriages were then and there in great danger of being obstructed, and the safety of divers persons then and there lawfully riding, passing and being conveyed in and upon the said engines and carriages as aforesaid, were then and there greatly endangered; against, etc., and contrary, etc. (Train & Heard, 381, and see Arch. 341.)

NOTE. — Under this section (1) an indictment lies for displacing or removing any switch, rail or signal of any railroad; also, for breaking down, ripping up, injuring or destroying any railroad, or railroad bridge, or any part of it; also, for obstructions, etc.; also, for false signals, with intent to injure person or property, being or passing on said railroad.

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2. *Indictment for same offense, by displacing, etc., where bodily or other injury resulted.* (Id.)

(*Use No.* 1 *to the* †, *and go on thus:*)

feloniously unlawfully, willfully and maliciously did displace a certain switch on the railroad of the (*any railroad, naming it*) then being, feloniously, unlawfully, willfully and maliciously intending thereby the persons then and there lawfully riding, passing, repassing and being conveyed on and along said railroad, in and upon the engines and carriages of said railroad company to bodily harm and injure. And the jurors aforesaid, selected and sworn as aforesaid, in the name and by the authority aforesaid, on their oaths aforesaid, do further present: That said J. S. at C., aforesaid, in the county aforesaid, on

the day and in the year aforesaid, did feloniously, unlawfully, willfully and maliciously displace the switch aforesaid, and thereby did then and there feloniously, unlawfully, willfully and maliciously by such displacing the switch aforesaid, injure one J. N., a passenger in and upon one of the said railroad carriages riding, on the day and in the year aforesaid, the said J. N. then and there being greatly bruised, injured, damaged and harmed in his body; against, etc., and contrary, etc. (Arch. 341.)

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3. *Indictment for murder by obstructing, etc., where death ensues.* (Id. § 3.)

(*Use No.* 1 *above to* †, *and go on thus:*)

feloniously, willfully and maliciously did displace a certain switch on the railroad of (*any railroad company, naming it*) then being, and thereby did then and there, feloniously, unlawfully and of his malice aforethought, by such displacing the switch aforesaid, one J. N., a passenger in one of the carriages of said railroad company riding and being conveyed on the day and in the year aforesaid, by the overturning a certain train, to wit, a train consisting of a certain locomotive steam engine, with a certain other tender and divers, to wit, twenty carriages attached thereto and drawn thereby, and which said train was then and there lawfully traveling and being propelled along the line of said railroad, did go off the track of said railroad, on said rail, and said train overturned the carriage in which the said J. N. then was riding, and part of said train was overturned, and the said J. N. dashed with great violence upon, over and between a certain part of said train and carriages, to wit, the hinder part of a certain carriage, and by means of said dashing then and there made and inflicted in and upon the head, to wit, in and upon the right side of the head of the said J. N., divers mortal wounds and fractures, and in and upon the body, to wit, in and upon the back, sides, belly, legs, thighs and feet of said J. N., divers mortal wounds, contusions, burns and scalds, of which said mortal wounds, fractures, bruises, contusions, burns and scalds, the said J. N., on the day and year aforesaid, in the county aforesaid, and within the jurisdiction of said court, instantly died; and so the jurors aforesaid,

on their oath aforesaid, do say, that the said J. S., by displacing the switch aforesaid, in manner and form aforesaid, and by virtue of the statute in such case made and provided, did feloniously and of his malice aforethought, the said J. N. kill and murder; against, etc., and contrary, etc. (See *Reg.* v. *Pargeter*, 3 Cox C. C. C. 191.)

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### SECTION 6. FORGERY AND COUNTERFEITING.

These crimes form the subject of Division VIII of the Criminal Code. This division comprises several offenses, each of which will be found under its proper head.

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#### (*a*) FORGERY AND COUNTERFEITING IN GENERAL.

These are the subject of section 73 of the Criminal Code. As to counterfeiting, this section does not apply to counterfeiting coin, but to counterfeiting in the sense of forgery of the several matters specified.

As in all of the United States the offense of forgery and counterfeiting is punishable by statute, and as many things may be the subject of forgery and yet not within the statutes, it follows, that the descriptions or denominations of the subjects of forgery in the statutes are material, principally in relation to the degree of punishment, and the phraseology of the indictment. (See *Commw.* v. *Ayer*, 3 Cush. 150; 3 Greenl. Ev. § 102; *State* v. *Ames*, 2 Greenl. 336; *Reg.* v. *Boult*, 2 Law & Kirw. 604; *Reg.* v. *Hartshorn*, 6 Cox C. C. 403; *Reg.* v. *Sharman*, id. 312.) "Beyond the range of the statutes, the subject of forgery is taken up by the common law, whereby the deceitful, false and fraudulent fabrication and use of all sorts of writings, is denounced and punished as criminal." (Train & Heard, 223.)

*Decisions.* — *Quigley* v. *People*, 2 Scam. 301; *Stone* v. *People*, 3 id. 326; *Swain* v. *People*, 4 id. 178; *Shattuck* v. *People*, 4 id. 477; *Gutchins* v. *People*, 21 Ill. 642; *Crofts* v. *People*, 2 Scam. 442; *Bland* v. *People*, 3 id. 364, *semble*; *Wilson* v. *Alexander*, 3 id. 362; *Wallace* v. *People*, 27 Ill. 45; *Livings* v. *Wiler*, 32 id. 387; *Noble* v. *People*, Bre. 29; *Pate* v. *People*, 3 Gilm. 644; *Durham* v. *People*, 4 Scam. 172; *Commw.* v.

*Wright*, 1 Cush. 46; *Same* v. *Taylor*, 5 id. 605; *State* v. *Twitty*, 2 Hawks. 248; *Commw.* v. *Searle*, 2 Binney, 332; *Same* v. *Barly*, 1 Mass. 62; *Same* v. *Stevens*, 1 id. 324; *State* v. *Carr*, 5 N. H. 267; *State* v. *Bean*, 19 Verm. 530; *State* v. *Weaver*, 13 Iredell, 491; *Rex* v. *Gilchrist*, 2 Leach C. C. 657; *Rex* v. *Hart*, 1 id. 145; *Rex* v. *Powell*, 1 id. 72; *Rex* v. *Goldstein*, Russ. & Ry. C. C. 473; *Reg.* v. *Williams*, 2 Den. C. C. 61. As to counterfeiting in general see *Brown* v. *People*, 4 Gilm. 439; *Townsend* v. *People*, 3 Scam. 326; *Edwards* v. *Commw.* 19 Pick. 124; *Hopkins* v. *Commw.* 3 Metc. 460; *Rex* v. *Williams*, 2 Leach C. C. 529; *Dugdale* v. *Reg.*, Pearce C. C. 64; *Reg.* v. *Fulton*, Jebb. C. C. 48; *Rex* v. *Heath*, Russ. & Ry. C. C. 184; *Reg.* v. *Ion*, 2 Den. C. C. 475.

*Limitations* — three years. *Penalty* — penitentiary not less than one year, nor more than fourteen years.

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1. *Indictment for forging and uttering.*

(R. S. 1845, ch. 30, § 73; Purp. 372; Scates, 385.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, feloniously did * forge a certain (*here name the instrument*) which said forged ——— is as follows, to wit (*here set out the instrument verbatim*), with intent to defraud one J. N.; against, etc., and contrary, etc.

*Second count.* — And the grand jurors aforesaid, selected and sworn as aforesaid, in the name and by the authority aforesaid, on their oaths aforesaid, do further present: That the said J. S. afterward, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, feloniously did † forge a certain other (*state the instrument forged as in an indictment for larceny*), with intent to defraud one J. N.; against, etc., and contrary, etc.

*Third count.* — (*Use second count to* †, *and go on thus:*) offer, utter, dispose of, and put off, a certain other forged ———, which said last mentioned forged ——— is as follows, that is to say (*here set out the instrument verbatim*), with intent to defraud the said J. N., said J. S. at the time he so uttered and

published the said last mentioned forged ——— as aforesaid, then and there well knowing the same to be forged; against, etc., and contrary, etc.

*Fourth count.* — (*Use second count to* †, *and go on thus:*) offer, utter, dispose of, and put off a certain other (*state the forged instrument, as in an indictment for larceny*), with intent to defraud one J. N.; against, etc., and contrary, etc. (Arch. 356.)

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2. *Indictment for forgery at common law of a will.* (Id.)

(*Use No.* 1 *first count to* *, *and go on thus:*)

falsely and fraudulently make, forge and counterfeit a certain will, purporting to be the last will and testament of one J. N., which will is of the tenor following, that is to say (*here set it out verbatim*), with intent thereby, then and there to cheat and defraud one E. F.; against, etc., and contrary, etc.

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3. *Indictment for forging and uttering a bank note.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

feloniously did forge a certain note of the bank of ——— (*name the bank*), commonly called a bank note, which said forged note is as follows, that is to say (*here set out the bank note in words and figures correctly*), with intent to defraud the president, directors and company of the bank of ——— (*naming it correctly*), an incorporated banking company in this State, to wit, at C. aforesaid, in the county of C. aforesaid; against, etc., and contrary, etc.

*Second count.* — (*Use second count of No* 1 *to* †, *and go on thus:*) offer, utter, dispose of, and put off a certain other forged note of the president, directors and company of the bank of ———, an incorporated banking company established in this State, at C. aforesaid, in the county aforesaid, commonly called a bank note, which said last mentioned forged note, is as follows, that is to say (*here set out the bank note*), with intent to defraud the president, directors and company of the bank of ———, an incorporated bank, etc. (*as above*), he, the said J. S., at the time he so offered, uttered, disposed of, and put off the

said last mentioned forged note, as aforesaid, then and there well knowing the same to be forged; against, etc., and contrary, etc.

*Third Count.* — (*Use second count of No.* 1 *to* †, *and go on thus:*) forge a certain promissory note for the payment of money, which said forged promissory note is as follows, that is to say (*here set out the bank note*), with intent to defraud the said president, directors and company of the bank of ——, an incorporated company, etc. (*as above*); against, etc., and contrary, etc.

*Fourth Count.* — (*Proceed as in third count is directed, and go on thus:*) offer, utter, dispose of and put off a certain other forged promissory note, for the payment of money, which said last mentioned forged promissory note, is as follows, that is to say (*here set out the bank note*), with intent to defraud the president, directors and company of the bank of ——, an incorporated banking company, etc. (*as above*), he, the said J. S., at the time he so offered, uttered, disposed of and put off the said last mentioned forged promissory note, as aforesaid, then and there well knowing the same to be forged; against, etc., and contrary, etc. (Arch. 369, 370.)

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4. *Indictment for forging a bill of exchange.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

forge a certain bill of exchange, which said forged bill of exchange is as follows, that is to say (*set out same in words and figures correctly*), with intent to defraud one J. N.; against, etc., and contrary, etc.

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5. *Same for forging a promissory note.* (Id.)

(*Use No.* 4 *as directed, and go on thus:*)

falsely, make, forge and counterfeit a certain false, forged and counterfeit promissory note, which false, forged and counterfeit promissory note is of the tenor following, that is to say (*here set out*), with intent thereby, then and there to injure and defraud one J. N.; against, etc., and contrary, etc.

6. *Same for uttering and publishing as true a forged promissory note.* (Id.)

(*Use No.* 1 *to asterisk* [*], *and go on thus:*)

had in his custody and possession a certain false, forged and counterfeit promissory note, the said J. S. then and there knowing the same to be false, forged and counterfeit, which false, forged and counterfeit promissory note is of the tenor following, that is to say (*here set it out*), and that the said J. S. then and there did feloniously utter and publish the same as true, with intent thereby then and there to injure and defraud one J. N., the said J. S. then and there knowing the said promissory note to be false, forged and counterfeit; against, etc., and contrary, etc.

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7. *Indictment for uttering a forged county order.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

did feloniously utter, publish and pass as true and genuine, a certain county order purporting to be drawn by L. M., the clerk of the County Court of the county of ——, upon the treasurer of said county, and payable to G. H., with intent to defraud the said county of ——; against, etc., and contrary, etc.

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(*b*) Counterfeiting or passing counterfeit gold or silver coin, with intent to defraud.

This offense is the subject of section 74 of the Criminal Code.

*Decisions*—none in Illinois.

*Limitation*—three years. *Penalty*—same as under section 73.

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1. *Indictment for counterfeiting current coin.*

(R. S. 1845, ch. 30, § 74; Purp. 373; Scates, 386.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* falsely and feloniously did counterfeit a certain piece of silver coin, current within this State, to wit, the State of Illinois, by the laws and usages thereof, called a dollar; against, etc., and contrary, etc.

2. *Another form for same.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

ten pieces of false and counterfeit gold coin, each piece thereof resembling, and apparently intended to resemble and pass for, a piece of the current gold coin current within this State, to wit, the State of Illinois aforesaid, called a dollar, falsely and feloniously did make and counterfeit; against, etc., and contrary, etc.

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3. *Indictment for passing counterfeit coin.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain piece of counterfeit silver coin, counterfeited in the likeness and similitude of the good and legal silver coin current within this State, to wit, the State aforesaid, by the laws and usages thereof, called a dollar, did utter and pass as true to one J. N., the said J. S. then and there well knowing the same to be false and counterfeit; against, etc., and contrary, etc.

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(*c*) HAVING COUNTERFEIT COIN IN POSSESSION, WITH INTENT TO PASS SAME.

This offense is the subject of section 75 of the Criminal Code.

*Decisions*—none in Illinois.

*Limitation* and *Penalty*—same as under section 73.

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1. *Indictment for having counterfeit coin in possession, with intent to pass same.* (Id. § 75.)

(*Use No.* 1 *of* (*b*) *to* *, *and go on thus:*)

had in his custody and possession a certain piece of false and counterfeit gold coin, counterfeited in the likeness and similitude of the good and legal gold coin, current within this State, to wit, the State aforesaid, by the laws and usages thereof, called a dollar, with intent, then and there, the said false and counterfeit coin to utter and pass, and thereby defraud the said J. N., the said J. S. then and there well knowing the same to be false and counterfeit; against, etc., and contrary, etc.

2. *Indictment for causing to pass counterfeit coin.* (Id. § 75.)

(*Use directions of next preceding form.*)

had in his custody and possession a certain piece of counterfeit gold coin, counterfeited in the likeness and similitude of the good and legal coin, current within this State, to wit, the State aforesaid by the laws and usages thereof, called a dollar, did fraudulently and feloniously cause and procure the same to be uttered and passed as true to one J. N., the said J. S. then and there well knowing the same to be false and counterfeit; against, etc.

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(*d*) HAVING FORGED NOTES, ETC., IN POSSESSION WITH INTENT, ETC.

This offense is the subject of section 76 of Criminal Code.

*Decisions.* — *Quigley* v. *People*, 2 Scam. 301; *Townsend* v. *People*, 3 id. 326; *Brown* v. *People*, 4 Gilm. 439.

*Limitation and Penalty* — same as under section 73.

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1. *Indictment for having counterfeit bank bill in possession with intent, etc.*

(R. S. 1845, ch. 30, § 76; Purp. 373; Scates, 386.)

That J. S., late of C., in the county of C, on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, * had in his custody and possession a certain false, forged and counterfeit bank bill, in the similitude of the bills payable to the bearer thereof, and issued by the president, directors and company of the bank of ———, then being a banking company incorporated in this State, to wit, the State aforesaid, which said false, forged and counterfeited bank bill is of the tenor following, that is to say (*here set it out*), with intent then and there to utter and pass the same, the said J. S. then and there knowing the said bank bill to be false, forged and counterfeit; against, etc., and contrary, etc.

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2. *Indictment for having in possession unfinished bank bills, with intent to complete same.* (Id. § 76.)

(*Use No.* 1 *next preceding to* *, *and go on thus:*)

feloniously had in his custody and possession a certain false, forged and counterfeit unfinished bank bill, made in similitude

of the bills payable to bearer, made to be issued by the president, directors and company of the bank of ———, then and there being a banking company established in this State, to wit, the State aforesaid, and incorporated by the laws thereof, with intent then and there to complete the unfinished bank bill aforesaid, with intent then and there to utter and pass the same, and thereby defraud the president, directors and company of the bank of ——— aforesaid, the said J. S. then and there well knowing the same to be false, forged and counterfeit; against, etc., etc.

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(*e*) MAKING FICTITIOUS BANK BILLS, ETC.

This offense is the subject of section 77 of the Criminal Code.

*Decisions*—none in Illinois. *Limitation* and *Penalty*—same as under section 73.

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1. *Indictment for making fictitious bank bills.* (Id. § 77.)

(*Follow directions in next preceding form, and go on thus:*) feloniously did falsely make a certain false and fictitious bill, purporting to be issued by the president, directors and company of the bank of ——, in the State of ——, for the payment of money to bearer, to wit, for the sum of five dollars, when in fact and in truth there was not any such banking company in existence, he, the said J. S., then and there well knowing the said bill to be fictitious, with intent then and there to pass, utter and publish the same as true, with intent to defraud J. N.; against, etc., etc.

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2. *Same for having fictitious bills in possession, with intent to utter, etc.* (Id. § 77.)

(*Follow directions in next preceding form, and go on thus:*) feloniously had in his possession a certain fictitious bill, purporting to be a bill of the —— bank of ——, in the State of ——, for the payment of money, to wit, the sum of five dollars, when in fact there was not then any such bank in existence, he, the said J. S., then and there well knowing the said bill to be fictitious, with intent to pass, utter and publish the

same as true, with intent to defraud J. N.; against, etc., and contrary, etc.

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(*f*) MAKING AND HAVING IN POSSESSION APPARATUS FOR COUNTERFEITING.

This offense is the subject of section 78 of Criminal Code.

*Decisions.* — *Miller* v. *The People*, 2 Scam. 233.

*Limitation* and *Penalty* — same as under section 73, with destruction of the apparatus for counterfeiting.

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1. *Indictment for making a counterfeiting tool.*

(R. S. 1845, ch. 30, § 78; Purp. 374; Scates, 387.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C., aforesaid, and the county aforesaid,* feloniously did engrave and make a certain plate, the same being then and there an instrument and implement adapted and designed for the forgery and making of false and counterfeit bills in the similitude of the bills issued by the president, directors and company of the bank of ———, then being a banking company legally established in this State, to wit, the State aforesaid; against, etc., etc.

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2. *Indictment for making a tool to be used in counterfeiting coin.* (Id. § 78.)

(*Use No.* 1 *to* *, *and go on thus:*)

feloniously did make a certain die, the same being then and there an instrument and implement adapted and designed for use in counterfeiting the current coin of this State, to wit, the State aforesaid, with intent to use and employ the same, and to cause and permit the same to be used and employed in counterfeiting coin, and in making the false and counterfeit coin aforesaid; against, etc., etc.

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3. *Indictment for having in possession tools for counterfeiting coin, with intent to use the same.* (Id. § 78.)

(*Use No.* 1 *to* *, *and go on thus:*)

knowingly and feloniously did have in his possession a certain

tool and instrument designed for, and made use of, in counterfeiting the coin current in this State, to wit, the State aforesaid, called a die, with intent to use and employ the same in coining and making the false and counterfeit coin aforesaid; against, etc., etc.

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4. *Another form for same.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

knowingly and feloniously did have in his possession, a certain mould, pattern, die, puncheon, tool and instrument adapted and designed for coining and making one side of a counterfeit coin in the similitude of one side or half part of a certain silver coin, called a half-dollar, to wit, that side or half part thereof, which represents a spread eagle, and has the words "*United States of America*"—"*half-dollar*;" said coin, called a half-dollar, being current by law and usage in this State, to wit, the State aforesaid, with intent then and there to employ the same mould, pattern, die, puncheon, tool and instrument, and cause the same to be used and employed in coining and making such false and counterfeit coin, as aforesaid; against, etc., and contrary, etc. (Train & Heard, 231.)

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5. *Indictment for having in possession a tool to be used in counterfeiting bank notes, with intent to use same.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

feloniously had in his possession a certain engraved plate, the same being then and there an instrument adapted and designed for the forging and making false and counterfeit notes in the similitude of the notes issued by the president, directors and company of the bank of ———, then being a banking company established in this State, situate, to wit, at C., in the county of C., and State aforesaid, with intent then and there to use the same in forging and making false and counterfeit notes in the similitude of the notes issued by the said president, directors and company of the said bank of ———; against, etc., etc. (Train & Heard, 229.)

(*g*) Forging, etc., the great seal of the State, and other seals of public officers and corporations.

This is the subject of section 81 of the Criminal Code.

*Decisions*—none in Illinois. *Limitation and penalty*—same as under section 73.

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1. *Indictment for counterfeiting the seal of the State.*

(R. S. 1845, ch. 30, § 81; Purp. 374; Scates, 387.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, the seal of this State, to wit, the State aforesaid, falsely, deceitfully, fraudulently and feloniously did forge and counterfeit; against, etc., etc.

*Second count.*—(*Use commencement of second count, ante, Outline Indictment.*) That the said J. S. afterward, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, falsely, deceitfully, fraudulently and feloniously did utter a certain other false, forged and counterfeit seal of this State as aforesaid, then and there well knowing the same to be false, forged and counterfeit; against, etc., etc. (Arch. 367.)

Note.—The above can readily be altered to apply to counterfeiting the seal of any court, county, or corporation.

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(*h*) Fraudulent issue and transfer of stock of corporations, etc.

These offenses are the subject of an act of 1855. (Laws of 1855. p. 163, §§ 1, 2.)

*Decisions*—none in Illinois.

*Limitation*—under both sections, three years. *Penalty*—under both sections, fine not over $2,000, and penitentiary not more than ten years, as the jury shall determine.

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1. *Indictment for fraudulent issue of stock.*

(Laws 1855, p. 163, § 1; Purp. 395; Scates, 421.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the

county aforesaid, the said J. S. then and there being an officer, to wit, the cashier of the —— bank, a corporation then and there duly and legally established, organized and existing under and by virtue of the laws of this State, to wit, the State aforesaid, as an incorporated bank,* did willfully, designedly, fraudulently and feloniously sign a certain false and fraudulent certificate, purporting to be a certificate of ownership of a share in the capital stock of the incorporated banking company aforesaid, with intent to sell said false and fraudulent certificate, he, the said J. S., then and there not being authorized to sign the certificate aforesaid by the charter and by-laws of said banking company, nor by any amendment thereof; against, etc., and contrary, etc. (See Arch. 378.)

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2. *Indictment for fraudulent sale of stock.* (Id. § 2.)

(*Use No.* 1 *to* *, *and go on thus:*)

did willfully, knowingly, designedly, fraudulently and feloniously sell to one J. N. a certain false and fraudulent certificate, purporting to be a certificate of a share in the capital stock of the banking company aforesaid, with intent to defraud the said J. N., he, the said J. S., then and there well knowing the said certificate to be false and fraudulent; against, etc., and contrary, etc. (See id. 379.)

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SECTION 7. CRIMES AND OFFENSES AGAINST PUBLIC JUSTICE.

This forms the subject of division 9 of the Criminal Code, sections 82–111, inclusive; and embraces several crimes and offenses, all which, with subsequent statutes under this head, are herein noticed.

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(*a*) PERJURY AND SUBORNATION OF PERJURY.

These are the subjects of sections 82, 83 and 84 of the Criminal Code, and Laws 1869, p. 143, § 6, and id. p. 199, § 1.

*Decisions.*—*Pankey* v. *People*, 1 Scam. 80; *Crandall* v. *Dawson*, 1 Gilm. 556, and cases cited; *Morrell* v. *People*, 32 Ill. 499; *Commonwealth* v. *White*, 8 Pick. 452; *State* v. *Furlong*, 26 Maine, 69; *State* v. *Street*, id. 33; *Commonwealth* v.

*Knight*, 12 Mass. 373; *Same* v. *Flynn*, 3 Cush. 525; *Same* v. *Pollard*, 12 Mete. 229; *State* v. *Hathaway*, 2 Nott & McCord, 118; *State* v. *Mumford*, 1 Dever, 519; *Rex* v. *Dowlin*, 5 I. R. 320; *Rex* v. *Aylett*, 1 id. 63; *Lavey* v. *Reg.*, 2 Den. C. C. 504; *Reg.* v. *Hallet*, id. 237; *Rex* v. *Richards*, 7 Dowl. & Ryl. 665.

*Limitation* — three years. *Penalty* — for perjury and subornation to perjury, under section 82, penitentiary, not less than year, nor more than fourteen years; under section 83, where death is caused by perjury, it is murder, and punished as such.

These crimes are infamous under section 174 of the Criminal Code.

Under Law of 1869, p. 143, § 6, "Constitutional Convention," false swearing, as to any of the oaths required by the act, is perjury, and punished as such. (See § 82 above.)

Under Law of 1869, p. 199, § 1, "to prevent frauds in elections for subscription to stock or for donations in aid of incorporated companies — or concerning county seats," the statutes as to perjury under the election law, February 22, 1861, § 4, and registry act section 14, apply to perjuries under this Law of 1869, in the elections mentioned.

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1. *Indictment for perjury on a trial before a justice of the peace.*

(R. S. 1845, ch. 30, § 82; Purp. 375; Scates, 388.)

That J. S., late of C., in the county of C., on the first day of March, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, in a certain cause in which A. B. was plaintiff, and C. D. defendant, which said cause was then and there tried before E. F., a justice of the peace of said county of C., on the trial of which cause said J. S. appeared as a witness for and on behalf of the said A. B., was then and there duly sworn (*or* "*affirmed*") by the said E. F., who had full power and authority to administer the oath, that the evidence he should give relating to the matter in difference between the parties should be the truth, the whole truth, and nothing but the truth; and that upon the trial of said cause, it became a material question whether the said A. B. had sold to the said C. D. twenty bushels of wheat, and that thereupon the said J. S.,

having then and there so sworn as aforesaid, did then and there, to wit, on the trial of said cause, before the said E. F., justice as aforesaid, falsely, willfully and corruptly depose, swear and give in evidence among other things, in substance as follows, to wit, that on or about the —— day of ——, in the year of our Lord ——, the said A. B. did sell to the said C. D. twenty bushels of wheat,† whereas in truth and in fact, the said A. B. did not, on or about the —— day of ——, in the year of our Lord ——, or any other time, sell to the said C. D. twenty bushels of wheat, or any other quantity of wheat; and so the jurors aforesaid, upon their oaths aforesaid, do say, that the said J. S., on the first day of March, in the year last aforesaid, at C. aforesaid, in the county aforesaid, before the said E. F., justice, etc., he, the said E. F., having lawful power and authority as aforesaid, by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, falsely, wickedly, willfully and corruptly did commit willful and corrupt perjury, to the great displeasure of Almighty God, in contempt of the people of the State of Illinois, and the laws thereof, to the evil and pernicious example of all others in the like case offending; against, etc., and contrary, etc.

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2. *Indictment for perjury, on trial at the Circuit Court.* (Id.)

That heretofore, to wit, at the April Term of the Circuit Court, for the county aforesaid, the Honorable A. B., judge of said court, presiding, a certain issue between one J. L. and one J. W., in a certain plea of trespass and assault, wherein the said J. L. was plaintiff and the said J. W. was defendant, came on to be tried in due form of law, and was then and there tried by a jury of the country in that behalf, duly sworn and taken between the parties aforesaid; upon which said trial, J. S., late of C., in the county of C., then and there appeared as a witness for and on behalf of the said J. W., the defendant in the plea aforesaid, and was then and there duly sworn before the Honorable A. B., Circuit Judge, so presiding; that the evidence, which he, the said J. S., should give to the court there, and to the said jury, so sworn as aforesaid, touching the matter then in question, between the said parties, should be

the truth, the whole truth and nothing but the truth, he, the said Honorable A. B., Circuit Judge, as aforesaid, then and there having full power and authority to administer the said oath to the said J. S. in that behalf; and the jurors first aforesaid, upon their oaths aforesaid, do further present, that at and upon the trial of the said issue, so joined between the said parties as aforesaid, it then and there became, and was a material question, whether the said J. W. assaulted and beat the said J. L.; and the jurors first aforesaid, upon their oath aforesaid, do further present, that the said J. S., being so sworn as aforesaid, not having the fear of God before his eyes, nor regarding the laws of this State, but being moved and seduced by the instigation of the devil and contriving and intending to prevent the due course of law and justice, and unjustly to aggrieve the said J. L., the plaintiff in the said issue, and to deprive him of the benefit of his suit then in question, and to subject him to the payment of sundry heavy costs, charges and expenses, then and there, on the trial of the said issue, upon his oath aforesaid, falsely, corruptly, knowingly, willfully and maliciously, before the said jurors, so sworn as aforesaid, and before the Honorable A. B., Circuit Judge, as aforesaid, did depose and swear (among other things) in substance and to the effect following, that is to say (*here set out the evidence, with the necessary innuendoes*), whereas, in truth and in fact (*here assign the perjury, as in No.* 1, *at* †). And so the jurors aforesaid, upon their oaths aforesaid, do say (*here follow No.* 1, *above, to the end, omitting E. F., justice, and substituting* "*Honorable A. B., Circuit Judge*"); conclude against the peace and contrary to the statute. (See Arch. 573.)

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3. *Indictment for perjury in affidavit for a capias.* (Id. § 82.)

That J. S., late of C., in the county of C., wickedly and maliciously contriving and intending unjustly to aggrieve one J. N., and to put him, the said J. N., to great expense, and also unjustly and maliciously to cause him, the said J. N., to be arrested for the sum of five hundred dollars, by virtue of a writ of the people of the State of Illinois, called a *capias ad respondendum*, to be sued out and prosecuted at the suit of him, the

said J. S., he, the said J. S., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, came in his proper person before G. H., then being clerk of the Circuit Court of the county aforesaid, then and there produced a certain affidavit in writing of him, the said J. S., and then and there before the said G. H., clerk as aforesaid, in due form of law was sworn concerning the truth of the matters contained in said affidavit, he, the said G. H., then and there having full power to administer the said oath to the said J. S. in that behalf; and that the said J. S., being so sworn, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, then and there, upon his oath aforesaid, before the said G. H., clerk as aforesaid, the said G. H. having full power to administer the said oath to the said J. S. in that behalf, falsely, corruptly, knowingly, willfully and maliciously in and by his said affidavit in writing, did depose and swear (among other things) in substance, and to the effect following, that is to say, that the said J. N. (meaning the said J. N. above mentioned), was then justly and truly indebted unto him, the said J. S., in the sum of five hundred dollars, for goods sold and delivered by the said J. S. to the said J. N., and at his (meaning the said J. N's.) request, as in and by the said affidavit of the said J. S., filed in the office of the clerk of the court aforesaid, more fully and at large appears; whereas, in truth and in fact, the said J. N., at the time the said J. S. made his oath and affidavit aforesaid, was not indebted to him, the said J. S., in the sum of five hundred dollars, for goods sold and delivered by the said J. S. to the said J. N., and whereas, in truth and in fact, the said J. N. was not then indebted to the said J. S. in the sum of five hundred dollars on any account whatever; and whereas, in truth and in fact, the said J. N. was not then indebted to the said J. S. in any sum whatsoever, on any account whatever, to the manifest perversion of public justice; against, etc., and contrary, etc. (See Arch. 567.)

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4. *Indictment for subornation to perjury.* (Id. § 82.)

That heretofore, to wit, in September Term, in the year of our Lord ——, a certain issue was joined in the Circuit Court

of the county of C., in the State aforesaid, the said Circuit Court then being holden at C., in the county aforesaid, between one J. L. and J. W., in a certain plea of trespass and assault in which the said J. L. was plaintiff, and the said J. W. defendant; and the jurors aforesaid, upon their oath aforesaid, do further present, that afterward, and before the trial of the said issue as hereinafter mentioned, and while same was depending, to wit, on the third day of July, in the year aforesaid, J. S., late of C., in the county of C., not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly contriving and intending to pervert the due course of law and justice, and wickedly and maliciously contriving and intending to aggreive the said J. L., the plaintiff in said issue, and to deprive him of the benefit of his suit then in question, and to subject him to the payment of sundry heavy costs, charges and expenses then and there, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, unlawfully, corruptly, wickedly and maliciously did solicit, suborn, instigate and endeavor to persuade one J. N. to be and appear as a witness on the trial of said issue, for and on behalf of the said J. W., defendant in the said issue, and upon the said trial falsely to swear and give in evidence, to and before the jurors which should be sworn to try the issue aforesaid, certain matters material and relevant to the said issue, and to the matters therein, and thereby put in issue, in substance, and to the effect following, that is to say, that the said J. W. (meaning the defendant in the issue aforesaid) did, on a certain day then past, to wit, on the tenth day of April, in the year aforesaid, beat, wound and bruise the said J. L. (meaning the plaintiff in the issue aforesaid), and did knock him, the said J. L., down, and with a large stick did then and there beat, wound and bruise, and greatly disfigure the said J. L. while he was so down; and the jurors first aforesaid, upon their oath aforesaid, do further present, that afterward, to wit, at the Circuit Court in and for the county aforesaid, at the September Term thereof, in the year of our Lord ——, held before the Honorable A. B., Circuit Judge, the issue aforesaid came on to be tried, and was then and there tried by a jury of the country in that behalf, duly sworn and

taken between the parties aforesaid; upon which said trial, the said J. N., in consequence and by the means, encouragement and effect of the said wicked and corrupt subornation and procurement of the said J. S., did then and there appear as a witness, for and on behalf of the said J. W., the defendant, in a plea above mentioned, and was then and there sworn, before the Honorable A. B., Circuit Judge, as aforesaid; that the evidence which he, the said J. N. should give to the court there, and to the jury so sworn as aforesaid, touching the matters then in question between the parties, should be the truth, the whole truth, and nothing but the truth (he, the said Honorable A. B., Circuit Judge, having full power to administer the said oath to the said J. N. in that behalf), and that, at and upon the trial of the said issue so joined between the said parties, it then and there became a material question, whether the said J. W. assaulted and beat the said J. L., and the said J. N., being so sworn as aforesaid, falsely, corruptly and willfully before the jurors so sworn, and taken between the said parties as aforesaid, and before the said circuit judge as aforesaid, did depose and swear, among other things, in substance, and to the effect following, that is to say, that (*here set out J. N's. evidence in substance, the same as is above stated, where the subornation is charged*), whereas, in truth and in fact, the said J. W. did not, etc. (*proceed here to assign the perjury as in No. 3 above*). And whereas, in truth and in fact, the said J. S. at the time he so solicited, suborned and instigated, and endeavored to persuade the said J. N. falsely and corruptly to swear as aforesaid, well knew that (*etc., following the words in the assignment of perjury*). And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S., on the third day of July, in the year of our Lord aforesaid, at C. aforesaid, in the county aforesaid, did unlawfully, curruptly, wickedly and maliciously suborn and procure the said J. N. to commit willful and corrupt perjury in and by his oath aforesaid, before the said jurors so sworn, and taken between the parties as aforesaid, and before the said Honorable A. B., Circuit Judge, as aforesaid (the said Honorable A. B. then and there having full power to administer said oath to the said J. N.), to the great displeasure of Almighty God, the evil and pernicious example of all others in the like case offending; against, etc., and contrary, etc. (Ar. 575.)

(*b*) Murder, where death by execution was caused by perjury.

1. *Indictment for murder, the death, by execution, being caused by perjury.* (Id. § 83.)

That heretofore, to wit, at the September Term of the Circuit Court, in and for the county of C., the Honorable A. B., Circuit Judge, of the —— judicial circuit of the State of Illinois, of which judicial circuit said county of C. forms part, presiding, a certain indictment wherein the people of the State of Illinois were plaintiffs and one J. W. was defendant, charged with the willful murder of one J. L., by the said J. W., by stabbing him, the said J. L., with a knife, came on to be tried in due form of law, and was then and there tried by a jury of the country in that behalf, duly sworn and taken between the parties aforesaid, upon which said trial J. S., late of C., in the county of C., then and there appeared as a witness for and on behalf of the said J. W., the defendant in the indictment aforesaid, and was then and there duly sworn before the Honorable A. B., Circuit Judge, so presiding, as aforesaid; that the evidence which he the said J. S. should give to the court there, and to the said jury so sworn as aforesaid, touching the matter then in question between the said parties, should be the truth, the whole truth and nothing but the truth, he, the said Honorable A. B., Circuit Judge, then and there having full power to administer the said oath to the said J. S. in that behalf. And the jurors first aforesaid, upon their oath aforesaid, do further present, that, at and upon the trial of the indictment aforesaid, it then and there became, and was a material question, whether the said J. W. did stab, cut and thrust the knife aforesaid, in the left breast of the said J. L., and thereby did, of his malice aforethought, the said J. L. kill and murder. And the jurors first aforesaid, upon their oath aforesaid do further present, that the said J. S. being so sworn as aforesaid, not having the fear of God before his eyes, nor regarding the laws of this State, but being moved and seduced by the instigation of the devil, and contriving and intending to pervert the due course of law and justice, and feloniously to procure the conviction of the said J. W. under the indictment aforesaid, and subject him to the

punishment of death, by hanging by the neck until he was dead, then and there, on the trial of the indictment aforesaid, did feloniously, falsely, wickedly, corruptly, knowingly, willfully and of his malice aforethought, before the said jurors so sworn as aforesaid, and before the said Honorable A. B., Circuit Judge, as aforesaid, depose and swear, among other things, in substance and to the effect following, that is to say, that on the first day of July, in the year of our Lord ——, at C. afore said, in the county aforesaid, the said J. W., of his malice aforethought, the said J. L. with the knife aforesaid, did stab, cut and thurst the knife aforesaid, in the left breast of said J. L., and a mortal wound thereby on him, the said J. L., did inflict, and of which said mortal wound the said J. L. then and there instantly died (*here assign the perjury as in No.* 3 *above, thus*, "whereas in truth," etc.); and the jurors first aforesaid, upon their oath aforesaid, do further present, that heretofore, to wit, at the — Term of the Circuit Court aforesaid, in the year of our Lord — aforesaid, holden at C., in the county aforesaid, the Honorable A. B., Circuit Judge aforesaid, presiding, the jurors so sworn and taken by the parties aforesaid, did bring into open court aforesaid, their verdict of "guilty" against the said J. W., for the killing and murder aforesaid of J. L. aforesaid by said J. W., which verdict the court then and there did record, and judgment of conviction on said verdict then and there was duly rendered and entered of record, and the said J. W. then and there was sentenced by the court aforesaid to be hanged by the neck until he be dead; and the jurors first aforesaid, upon the oath aforesaid, do further present, that pursuant to the judgment of conviction and sentence aforesaid, the said J. W. was executed in due form of law by hanging by the neck until he died, to wit, at C. aforesaid, in the county aforesaid, on the —— day of ——, in the year of our Lord aforesaid; and so the jurors first aforesaid, on their oaths aforesaid, do say, that the said J. S., on the —— day of ——, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, before the Honorable A. B., Circuit Judge aforesaid, and the jurors so sworn and taken as aforesaid between the parties, in the indictment aforesaid named, he, the said Honorable A. B., Circuit Judge, then and there having full power to admin-

ister the oath aforesaid to the said J. S., by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, falsely, wickedly, willfully and corruptly did commit willful and corrupt perjury, and of his malice aforethought, did thereby cause the death of the said J. W., and by force of the statute in such case made and provided, did commit murder; and so the jurors first aforesaid, upon their oath aforesaid, do say, that of his malice aforethought, the said J. S. the said J. W. did kill and murder; against, etc., and contrary, etc.

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(*c*) Bribery.

This crime is the subject of sections 85, 86, 87, of the Criminal Code.

*Decisions.*—Under sections 85 and 87, none in Illinois; under section 86, see *Cook* v. *Shipman*, 24 Ill. 614. On Bribery in general, see *U. S.* v. *Worrall*, 2 Dallas, 384; *Barsfield* v. *The State*, 14 Ala. 603; *Commw.* v. *Chapman*, 1 Virg. Cases, 138; 3 Greenl. Ev. § 72; Arch. Cr. Pl. 586.

*Limitation*—under sections 85, 86, three years; under section 87, eighteen months. *Penalty*—under sections 85 and 86, penitentiary not less than one nor more than five years; under section 86, fine not over $500.

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1. *Indictment for bribery of justice of the peace, to influence him to favor, etc.*

(R. S. 1845, ch. 30, § 85; Purp. 375; Scates, 388.)

That heretofore, to wit, on the first day of July, in the year of our Lord ——, at C., in the county of C., one A. C., Esquire, then and there being a justice of the peace in and for said county, duly commissioned to perform and fulfill the duties appertaining by law to said office of justice of the peace in and for said county, did then and there make a certain warrant, under his hand and seal, in due form of law, bearing date the day and year aforesaid, directed to all constables of said county, and especially to J. N., commanding him to take and bring before the said A. C., so being such justice of the peace, or before some other justice of the peace within and for said county, the body of D. F., late of C., aforesaid, in the county

aforesaid, to answer (*as in warrant stated*) and which warrant afterward, to wit, on the day and year aforesaid, in the county aforesaid, was delivered to the said J. N., then being one of the constables of C. aforesaid, to be executed in due form of law. And the jurors aforesaid, on their oath aforesaid, do further present, that J. S., late of C., aforesaid, in the county aforesaid, well knowing the premises, and the said warrant not having as yet been executed by J. N., aforesaid, the constable aforesaid, contriving and unlawfully intending to pervert the due course of law and justice (a), and to corrupt, induce and influence A. C., aforesaid, the justice of the peace aforesaid, before whom the charge and complaint aforesaid was made and then pending, and as yet undetermined *, to be more favorable to him, the said D. F., than to the complainant, unlawfully, willfully and corruptly, on the day and year aforesaid, did give the sum of fifty dollars in money into the hands of said A. C., so being justice of the peace aforesaid, and by whom the complaint aforesaid was to be heard and determined, in order that he, the said A. C., on said hearing and in his determination and judgment should be more favorable to the said D. F. than to the complainant. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S., on the first day of July, in the year aforesaid, at C. aforesaid, in the county aforesaid, in manner and form aforesaid, unlawfully, wickedly and corruptly did bribe the said A. C., so being justice of the peace as aforesaid. And so the jurors aforesaid, on their oath aforesaid, do say, that † by force of the statute in such case made and provided, the said J. S. has committed bribery, in contempt of the people and the law, in the perversion of justice and to the evil example of all others in the like case offending; against, etc., and contrary, etc. (See Arch. 580.)

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2. *Indictment for bribery of a justice of the peace to execute his office with partiality.* (Id. § 86.)

(*Use No.* 1 *above to* *, *making the indictment accord with the facts, and go on thus:*)

should execute the powers in him vested by law as such justice of the peace, with partiality to said D. F., and otherwise than as required by law to be by him performed and executed. And

so the jurors aforesaid, upon their oath aforesaid, do say that (*use No.* 1 *at dagger* [†] *to end*); against, etc., and contrary, etc.

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3. *Indictment for bribery of a constable.* (Id. § 87.)

(*Use No.* 1 *to* [a], *and go on thus:*)

and to prevent the said D. F. from being arrested and taken under and by virtue of the warrant aforesaid, afterward, to wit, on the day and year aforesaid, unlawfully, wickedly and corruptly did offer unto the said J. N., so being constable as aforesaid, and having in his possession the said warrant so delivered to him to be executed as aforesaid, the sum of fifty dollars, if he, the said J. N. would refrain from executing the said warrant, and from taking and arresting the said J. N., under and by virtue of the same, for and during ten days from that time, that is to say, from the time he, the said J. S., so offered the said fifty dollars to the said J. N. as aforesaid. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. S., on the first day of July, in the year aforesaid, at C. aforesaid, in the county aforesaid, in manner and form aforesaid, did unlawfully attempt and endeavor to bribe the said J. N., so being constable as aforesaid, to neglect and omit to do his duty as such constable, and to refrain from taking and arresting the said D. F., under and by virtue of the warrant aforesaid, in contempt of the people and the law, and to the evil example of all others in the like case offending; against, etc., and contrary, etc. (See Arch. 580.)

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(*d*) Public officers or others stealing, embezzling, altering, etc., public records, etc.

This crime is the subject of section 88 of the Criminal Code.

*Decisions* — none in Illinois. See *Rex* v. *Walker*, 1 Mo. C. C. 155.

*Limitation* — three years. *Penalty* — penitentiary not less than one, nor over seven years.

Note. — This section 88 refers to all public officers, and other persons, and embraces stealing, embezzling, altering, corrupting, withdrawing, falsifying or avoiding any record, etc.; it also extends to falsely discharging and concealing any issue, etc., and to forging, etc., any recorded document, and to altering, etc., public records.

1. *Indictment for stealing a record.*

(R. S. 1845, ch. 30, § 88; Purp. 376; Scates, 389.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, a certain judgment record of the Circuit Court of the county aforesaid, in and for said county, in the office of the clerk of said court at C. aforesaid, in the county aforesaid †, then and there being *, then and there unlawfully and feloniously did steal, take and carry away; against, etc., and contrary, etc. (Arch. 200.)

NOTE. — *The ownership or value need not be alleged.*

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2. *Indictment for altering a public record.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

then and there unlawfully, feloniously and maliciously did alter, deface and falsify; against, etc., and contrary, etc. (Arch. 201.)

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3. *Indictment for withdrawing a record.* (Id.)

(*Use No.* 1 *to* †, *and go on thus:*)

from its place of deposit for the time being, from the office of the said clerk of said court, unlawfully and fraudulently take and withdraw; against, etc., and contrary, etc.

NOTE. — A second count stating the fraudulent purpose may be added.

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(*e*) INHUMANITY OF JAILOR.

This offense is the subject of section 89 of the Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — eighteen months. *Penalty* — fine not over $500, and removal from office.

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1. *Indictment of jailer for inhumanity.*

(R. S. 1845, ch. 30, § 89; Purp. 376; Scates, 389.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, then and there being jailer of the common

jail of the county aforesaid, at C. aforesaid, in said county, and bound by law to discharge the duties of his office, as such jailer faithfully and according to law, did unlawfully, willfully and inhumanly oppress one J. N., then and there in the common jail aforesaid, being a prisoner in the custody and charge of the said J. S., as such jailer, by divers kickings and beatings, without lawful cause or provocation, to the injury of the said J. N., and the scandal of the administration of justice, in contempt of the people aforesaid, and of the laws of the State of Illinois; against, etc., and contrary, etc.

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(*f*) Officers overholding records, etc., from their successors in office.

This offense is the subject of section 90, of Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — three years. *Penalty* — penitentiary not less than one year, nor more than five years.

The above section extends also to mutilating, etc., and taking records away from the office, so that the successor or party entitled cannot get them.

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1. *Indictment of Clerk of Circuit Court for withholding records from his successor in office.*

(R. S. 1845, ch. 30, § 90; Purp. 376; Scates, 389.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, theretofore being clerk of the Circuit Court in and for said county, and by law entitled to the custody and charge of the records, papers and documents in his office as such clerk, during the continuance of the term of his office, as fixed by law, and bound by law to transfer all such records, papers, and documents to his successor in said office, duly commissioned and qualified, and the term of office of said J. S., as clerk of said Circuit Court having expired in due course of law, and one J. N., of same place, then and there being the duly elected clerk of said court, and being then and there lawfully the successor of said J. S. in said office of clerk

of said court, and the said J. S. being then and there ready and willing his said office to enter upon and its duties to execute and perform, and having required of and demanded from said J. S. the custody and charge of said office, and of the records, papers and documents therein and thereto appertaining, he, the said J. S., then and there unlawfully, willfully and maliciously did withhold and detain from the said J. N. the records, papers and documents aforesaid, to the great scandal of the administration of justice, in contempt of the people, etc., and the laws of the State of Illinois, and to the evil example of all others in the like case offending; against, etc., and contrary, etc.

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### (*g*) PERSONATION.

This offense is the subject of section 91, of the Criminal Code.

*Decisions.* — None in Illinois. (See *Reg.* v. *Thompson*, 2 M. & R. 355.)

*Limitation* — three years. *Penalty* — penitentiary not less than one year, nor more than ten years.

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1. *Indictment for personation on acknowledgment of a deed.*

(R. S. 1845, ch. 30, § 91; Purp. 377; Scates, 390.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, * did feloniously, and without due authority so to do, personate one J. N., then of C. aforesaid, in the county aforesaid, and did then and there feloniously acknowledge in the name of said J. N., before A. B., a justice of the peace in and for said county, a certain deed of land, situate in said county, purporting to be from the said J. N. to one J. W.; against, etc., and contrary, etc.

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2. *Indictment for personating bail.* (Id.)

(*Use No.* 1, *above, to* *, *and go on thus:*)

before the Honorable A. B., Circuit Judge of the Circuit Court in and for the county aforesaid, at C. aforesaid, in the

county aforesaid (the said A. B., Circuit Judge aforesaid, then and there having lawful authority to take any recognizance of bail in any suit or action depending in said court), then and there did feloniously acknowledge a certain recognizance of bail, in the name of J. N., in a certain cause then depending in the said court, wherein C. D. was plaintiff, and E. F. defendant, he, the said J. S., not being then and there duly authorized so to do, and the said J. N. not being then and there privy or consenting to the said J. S. so acknowledging such recognizance in his name as aforesaid; against, etc., and contrary, etc. (Arch. 401.)

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(*h*) Resisting Officers.

This offense is the subject of section 92 of the Criminal Code.

*Decisions.* — *Wentworth* v. *People*, 4 Scam. 550; *McQuoid* v. *People*, 3 Gilm. 76; *Cantrill* v. *People*, id. 356; *Bowers* v. *People*, 17 Ill. 373, this case gives a good form of indictment for resisting an officer; *State* v. *Hooker*, 17 Verm. 658; *State* v. *Harley*, 2 Strobh. 73; *State* v. *Downer*, 8 Verm. 424; *Commonwealth* v. *Kirby*, 2 Cush. 577; 2 Stark. Cr. Pl. 407, note (*n*).

*Limitation* — eighteen months. *Penalty* — fine not over $500 and imprisonment not over one year.

Note. — Section 92 provides, that any officer who, under color of his commission or authority, shall, without lawful necessity, assault or beat any one, shall, on conviction, suffer same penalty.

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1. *Indictment for resisting a constable.*

(R. S. 1845, ch. 30, § 92; Purp. 377; Scates, 390.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* in and upon one J. N., then and there being a constable, and then and there being in the due execution of his duty as such constable under a lawful process, and him, the said J. N., so being in the execution of his duty as aforesaid, then and there did beat, wound and ill treat, and other wrongs to the said J. N., then and there did, to the great damage of the said J. N.; against, etc., and contrary, etc. (Arch. 459.)

2. *Another form.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

did knowingly and willfully obstruct, resist and oppose J. N., who was then and there a constable of said county, in attempting to serve an execution upon the goods and chattels of A. B., which execution was issued by C. D., a justice of the peace of the said county, and delivered to the said J. N., constable as aforesaid, to be by him executed, upon a judgment rendered by the said justice of the peace against the said A. B., in favor of E. F.; against, etc., and contrary, etc.

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(*i*) RESCUES AND ESCAPES.

These offenses are the subject of sections 93–101 inclusive.

*Decisions*—under section 101. See *Pease* v. *Hubbard*, 37 Ill. 257.

*Limitation.*—Under sections 93, 94, 95, 97, three years; under sections 96, 98, 99, 100 and 101, eighteen months, for all, except where the offense charged is capital, when, three years.

*Penalty.*—Under section 93, where the convict's punishment is death, penitentiary not less than one year, nor over fourteen years; where less than death, same punishment as on rescued convict.

Under section 94, fine not over $1,000, and penitentiary not over three years, and where rescued prisoner would be subject to fine or imprisonment, or both, same punishment as on rescued prisoner.

Under section 95, penitentiary in solitary confinement not over three months, and confinement to hard labor not over ten years.

Under section 96, fine not over $200.

Under section 97, fine not over $500, and penitentiary not over six months.

Under section 98, fine in amount not over that in the civil process.

Under section 99, fine not over $500, and county jail not over one year.

Under section 100, fine not over $1,000, and county jail not over one year.

Under section 101, fine not over $1,000, and county jail not over six months. If the escaped prisoner be charged with murder or any capital offense, penitentiary not less than one year, nor over ten years. Negligent escape fined not over $500.

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1. *Indictment for escape of convict.*

(R. S. 1845, ch. 30, § 93; Purp. 378; Scates, 390.)

That heretofore, to wit, at a Circuit Court holden for the county of C., in the State aforesaid, at the April Term thereof, in the year of our Lord —— (*here continue the record of conviction in the past tense*), as by the record thereof more fully and at large appears; which said judgment still remains in full force and effect, and not in the least manner reversed or made void; * and the jurors first aforesaid, upon their oath aforesaid do further present, that afterward, to wit, at the said April Term of the court above mentioned, he, the said J. N., was then and there committed to the care and custody of the warden of the penitentiary of said State, at C., in the county of C. aforesaid, there to be kept in safe custody of the warden aforesaid of said penitentiary, for the term of his confinement, under the sentence and judgment of the court aforesaid; † and the jurors aforesaid, upon their oath aforesaid, do further present, that J. S., late of C., in the said county, afterward, and before the expiration of the (—— *years, state the term of imprisonment*), which the said J. N. was so sentenced to be imprisoned as aforesaid, and while said J. N. was in custody of the warden aforesaid, of the penitentiary aforesaid, to wit, on the first day of July, in the year aforesaid, at C. aforesaid, in the county aforesaid feloniously (*if the offense of J. N. was felony, if a misdemeanor, use the word "unlawfully," not "feloniously"*), unlawfully, voluntarily and contemptuously did set at liberty and suffer to escape the said J. N., and go at large, whithersoever he would, whereby the said J. N. did then and there escape out of said penitentiary, and go at large, whithersoever he would; in contempt of the people and laws of the State of Illinois; against, etc., and contrary, etc. (See Arch. 553.)

2. *Indictment for rescuing a felon from a constable before conviction.* (Id. § 94.)

That on the first day of June, in the year of our Lord ——, at C., in the county of C., J. S., then and there being one of the constables of C. aforesaid, in the county aforesaid, legally authorized and duly qualified to perform and discharge the duties of said office, brought one J. N. before A. C., esquire, then being one of the justices of the peace within and for said county of C., legally authorized and duly qualified to perform and discharge the duties of said office; and the said J. N. was then and there charged before the said A. C. by one E. F., upon the oath of the said E. F., that the said J. N. had then lately before by force and against her will, feloniously ravished and carnally knew the said E. F., and the said J. N. was then and there examined before the said A. C., the justice aforesaid, touching the said offense so to him charged as aforesaid, upon which the said A. C., the justice aforesaid, did then and there make a certain warrant under his hand and seal, in due form of law, bearing date the said first day of July, in the year aforesaid, directed to the jailer of the common jail of the county aforesaid, commanding the said jailer that he should receive into his custody the said J. N., brought before the said A. C., and charged upon the oath of the said E. F. with the premises above specified, and the said justice, by the said warrant, did command the said jailer of the said jail to safely keep the said J. N. until he, by due course of law, should be discharged, which said warrant afterward, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, was delivered to the said J. S., then being one of the constables of said C. as aforesaid, and then and there having the said J. N. in his custody for the cause aforesaid, and the said J. S. was then and there commanded by the said A. C., the justice aforesaid, to convey the said J. N. forthwith to the said jail, and to deliver the said J. N. to the jailer of said jail, together with the warrant aforesaid;* and the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. N., late of C. aforesaid, in the county aforesaid, and J. T., late of same place, afterward, and while the said J. S. was conveying the said J. N., under and by virtue of said war-

rant, to the said jail of said county, to wit, the day and year last aforesaid, with force and arms, at C. aforesaid, in the county aforesaid, in and upon the said J. S., then and there being a constable as aforesaid, and then and there lawfully having the said J. N. in his custody by virtue of said warrant, for the cause aforesaid, in the due execution of his said office, then and there being, did make an assault, and him, the said J. S., then and there did beat, wound and ill treat, and that the said J. T., the said J. N., out of the custody of the said J. S., and against the will of him, the said J. S., then and there feloniously, unlawfully and forcibly did rescue and put at large, to go whithersoever he would, to the great hindrance of justice, and in contempt of the people and the law, to the evil example of all others in the like case offending, and against, etc., and contrary, etc. (Arch. 560.)

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3. *Indictment against the warden of the penitentiary for a voluntary escape.* (Id. § 95.)

(*Use No.* 1 *above to* *, *and go on thus:*)

and the jurors first aforesaid, upon their oaths aforesaid, do further present, that afterward, to wit, at the said April Term, in the year aforesaid, of the Circuit Court above mentioned, the said J. N. was then and there committed to the care and custody of J. S., the said J. S. then and there still being the warden of the penitentiary aforesaid, in and for the State aforesaid, there to be kept and imprisoned in the penitentiary aforesaid, according to and in pursuance of the judgment and sentence aforesaid, and the said J. S. him the said J. N. then and there had in the custody of him the said J. S., for the cause aforesaid, in the penitentiary aforesaid; and the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. S., late of C., in the county of C., aforesaid, afterward, and before the expiration of the —— calendar months for which the said J. N. was so sentenced to be imprisoned as aforesaid, and while the said J. N. was in the custody of the said J. S., as such warden of the penitentiary aforesaid, to wit, on the first day of July, in the year of our Lord ——, at C., in the county of C., aforesaid, he, the said J. S., feloniously, unlawfully, voluntarily and contemptuously

and fraudulently connived at, permitted and suffered the said J. N. to escape out of the said penitentiary and go at large whithersoever he would, contrary to the duty of the said J. S., so being warden of the penitentiary aforesaid, to the manifest hindrance of justice, to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 553.)

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4. *Indictment against the warden of the penitentiary for negligent keeping of prisoner.* (Id. § 96, id.)

(*Use No.* 1 *to* *, *and go on thus:*)

and the jurors first aforesaid, upon their oath aforesaid, do further present, that, pursuant to and in obedience to said judgment and sentence, the said J. N. was duly committed to the care and custody of J. S., still being warden of the penitentiary of said State, at C., in the county of C. aforesaid, there to be kept and imprisoned in the penitentiary aforesaid, and the said J. S., being warden as aforesaid, the said J. N., then and there had in the custody of said J. S., for the cause aforesaid, in the penitentiary aforesaid; and the jurors first aforesaid, upon their oaths aforesaid, do further present, that the said J. S., late of C., in the county aforesaid, afterward, and before the expiration of the —— calendar months, for which the said J. N. was so sentenced to be imprisoned as aforesaid, and while he was in the custody of the said J. S., as such warden as aforesaid, to wit, on the first day of July, in the year of our Lord ——, and on divers days and times, he, the said J. N., was permitted to be at large, without the cell assigned to him as such convict, and was by said J. S., warden as aforesaid, permitted to be visited, conversed with, comforted and relieved contrary to the rules and regulations of the penitentiary aforesaid, and to the duty of said J. S., as warden aforesaid, in manifest hindrance of justice, and to the evil example of all others in the like case offending; against, etc., and contrary, etc. (See Arch. 552.)

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5. *Indictment for conveying tools to a prisoner to aid in his escape.* (Id. § 97.)

(*Use No.* 1 *to dagger* [†], *and go on thus:*)

and the jurors aforesaid upon their oaths aforesaid do further

present, that J. T., late of C., in the county of A., afterward, and while the said J. N. was, and remained in the custody of the said J. S., in the penitentiary aforesaid, to wit, on the first day of July, in the year last aforesaid, at C. aforesaid, in the county aforesaid, feloniously and unlawfully did convey and cause to be conveyed into the said penitentiary, two steel files, being tools and instruments proper to facilitate the escape of prisoners, and the same being such instruments as aforesaid, then and there feloniously did deliver and cause to be delivered to the said J. N., without the consent or privity of the warden or officers of said penitentiary, the said J. N. being then and there a prisoner in the said penitentiary, and then and there lawfully detained for the felony aforesaid, in the judgment and sentence aforesaid, mentioned and expressed, and that the said files being such instruments as aforesaid, were then and there so conveyed into the said penitentiary, and delivered to the said J. N. by the said J. T., as aforesaid, with the felonious intent then and there to aid and assist the said J. N. so to escape, and attempt to escape from and out of said penitentiary, in manifest, etc. (*use next preceding precedent to end*).

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6. *Indictment for rescue of prisoner held under civil process.* (Id. § 98.)

That on the first day of June, in the year of our Lord ——, at C., in the county of C., one R. T. came before the clerk of the Circuit Court in and for the county aforesaid, and did sue out of said court a certain writ, then and there being a civil process of *capais ad respondendum* against one A. B., of C., in the county aforesaid, for a certain debt then and there due and owing to said R. T. by the said A. B. for a large sum of money, to wit, the sum of five hundred dollars, and the clerk aforesaid did then and there issue said writ, under his hand and seal of said court, directed to the sheriff of the county aforesaid, thereby commanding him (*here set out the command of the writ*), which said writ, afterward, to wit, on the same day and year aforesaid, at C. aforesaid, in the county aforesaid, was delivered to C. D., then being sheriff of the county aforesaid, in due form of law to be executed; by virtue of

which said writ the said C. D., sheriff aforesaid, to wit, on the day and year aforesaid, at C., in the county aforesaid, did take and arrest the body of said A. B., and the said A. B. had in the custody of said C. D., sheriff as aforesaid, under the writ aforesaid; and the jurors aforesaid, upon, etc., do further present, that the said A. B., late of, etc., in, etc., and J. T., late of same place, afterward, and while said A. B. was in the custody of C. D., under the writ aforesaid, and while said C. D. was conveying said A. B., under and by virtue of said writ to the common jail of said county, to wit, on the day and year aforesaid, with force and arms, at, etc., in, etc., and upon the said C. D., then and there being sheriff as aforesaid, and then and there being, did make an assault, and the said C. D. then and there did beat, wound and ill treat, and that the said J. T., the said A. B., out of the custody of the said C. D., and against the will of the said C. D., then and there unlawfully and forcibly did rescue and put at large, to go withersoever he would, and the said A. B. himself out of the custody of the said C. D., and against the will of the said C. D., then and there unlawfully and forcibly did rescue and put at large, to go withersoever he would; in manifest, etc.

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7. *Indictment for aiding in the escape of prisoner, by conveying disguises, etc.* (Id. § 99.)

(*Use No.* 1. *to dagger* [†], *and go on thus, substituting the word "jail" for "penitentiary."*

and the jurors aforesaid, etc., do further present, that J. T., late of C., in the county of C., afterward, and while the said J. N. was and remained in the jail of the county aforesaid, to wit, on the first day of July, in the year last aforesaid, at C., aforesaid, in the county aforesaid, feloniously and unlawfully did convey and cause to be conveyed into the jail aforesaid, certain disguises of clothing, being instruments proper to facilitate the escape of prisoners, and the same disguises, being such instruments as aforesaid, then and there feloniously did deliver and cause to be delivered to the said J. N., without the consent or privity of said jailer, of said jail, the said J. N. then and there being a prisoner in said jail, and then and there

lawfully detained for the felony aforesaid, in the said judgment and sentence above mentioned stated, and that the said disguises, as aforesaid, were then and there so conveyed into the jail aforesaid, and delivered to the said J. N., by J. T., aforesaid, with the felonious intent then and there to aid and assist the said J. N., so being such prisoner, and in custody as aforesaid, to escape and attempt to escape from and out of the said jail, and go at large, withersoever he would; in manifest, etc. (*conclude as next preceding form*).

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8. *Indictment for rescue of prisoner from the custody of an officer.* (Id. § 100.)

(*Use No* 2 *to* *, *and go on thus:*)

and the jurors aforesaid, etc., do further present, that the said J. N., late of C., aforesaid, in the county aforesaid, so being in the custody of the said J. S., under and by virtue of the warrant aforesaid, afterward, and while he continued in such custody and before he was delivered to the jailer aforesaid, to wit, on the day and year last aforesaid, at C., aforesaid, in the county aforesaid, while the said J. S. was conveying said J. N. under and by virtue of said warrant to the jail of the county aforesaid, one J. T., late of C., aforesaid, in the county aforesaid, with force and arms, at C. aforesaid, in the county aforesaid, in and upon the said J. S., then and there being such constable, did make an assault, and the said J. S. then and there did beat, wound and ill treat, and that the said J. T. the said J. N. out of the custody of the said J. S. and against the will of the said J. S. then and there did rescue and put at large, to go whithersoever he would, whereby the said J. N. did then and there escape and go at large withersoever he would, to the great hindrance of justice; to the evil example, etc. (*conclude as in next preceding form directed*).

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9. *Indictment against a constable for a negligent escape.* (Id. § 101.)

(*Use No.* 2 *to* *, *and go on thus:*)

and the jurors aforesaid, etc., do further present, that the said J. S., late of C., in the county aforesaid, afterward, to wit, on

the day and year last aforesaid, then being one of the constables of C. aforesaid, and then having the said J. N. in his custody for the cause aforesaid, at C. aforesaid, in the county aforesaid, the said J. N., out of the custody of the said J. S. (*"feloniously" if the charge be felony, "unlawfully" if a misdemeanor*), feloniously, unlawfully, voluntarily and contemptuously did permit and suffer the said J. N. to escape, and go at large, whithersoever he would, whereby the said J. N., did then and there escape, and go at large whithersoever he would, to the great hindrance of justice, to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 551.)

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(*j*) REFUSAL OF OFFICER TO ARREST, ETC., AN ACCUSED PERSON.

This misdemeanor is the subject of section 102 of Criminal Code.

*Decisions*—none in Illinois.

*Limitation*—eighteen months. *Penalty*—fine not over $500, and county jail not over six months.

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1. *Indictment for refusal by a constable to arrest an accused person.*

(R. S. 1845, ch. 30, § 102; Purp. 379; Scates, 391.)

That on the first day of July, in the year of our Lord ——, at C., in the county of C., J. S. then and there being one of the constables of C. aforesaid, and then and there lawfully such constable, and by virtue of his said office required to do, and perform all acts legally appertaining to said office, afterward, to wit, on the day and year aforesaid, one H. C., late of C. aforesaid, in the county aforesaid, having made complaint upon oath before A. B., then and there being one of the justices of the peace in and for the county aforesaid, legally authorized and duly qualified to perform the duties of said office, that one J. N., also late of C. aforesaid, in the county aforesaid, then and there being on the day and year aforesaid, at C. aforesaid, in the county aforesaid, did steal, take and carry away money of the goods and chattels of said H. C., and the said A. B., the justice aforesaid, did then and there make a certain warrant

under his hand and seal in due form of law, bearing date the day and year aforesaid, directed to said J. S., constable aforesaid, or any constable of C. aforesaid, to arrest the body of the said J. N., and him bring before said justice, that said complaint may be inquired into in due course of law, which said warrant was delivered afterward, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, by said A. B., justice aforesaid, to said J. S., then being constable as aforesaid, for execution in due course of law; and the jurors aforesaid, etc., do further present, that said J. S., late of C. aforesaid, in the county aforesaid, afterward, to wit, on the day and year last aforesaid, then being one of the constables of C. aforesaid, not regarding his duty in that behalf, but contriving and intending the due execution of justice to hinder and prevent, afterward, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, unlawfully, willfully and contemptuously did refuse to arrest the said J. N., as by said warrant he was commanded, contrary to his duty in that behalf as constable aforesaid, in manifest contempt and delay of justice; against, etc., and contrary, etc.

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(*k*) Compounding offenses.

This forms the subject of section 103 of Criminal Code.

*Decisions.*—*Taylor* v. *Cottrell*, 16 Ill. 94, and cases cited; *Commonwealth* v. *Pease*, 16 Mass. 91; *Jones* v. *Rice*, 18 Pick. 440; *Rex* v. *Southerton*, 6 East, 126; *Edgecombe* v. *Rodd*, 5 id. 302; *Keir* v. *Leman*, 6 Q. B. 308; *Collins* v. *Blantern*, 2 Wils. 349; 1 Smith's Leading Cases, 413 (Am. ed. 1852); *Rex* v. *Stone*, 4 Car. & P. 379; and see *State* v. *Dandy*, 1 Brev. 395.

*Limitation*—eighteen months. *Penalty*—fine in double the amount agreed for or taken.

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1. *Indictment for compounding a felony.*

(R. S. 1845, ch. 30, § 103; Purp. 379; Scates, 391.)

That heretofore, to wit, on the first day of July, in the year of our Lord ——, at C., in the county of C., one A., the wife of J. N., feloniously stole, took and carried away one silver tankard of the value of fifty dollars, of the goods and chattels

of one J. S.; against the peace and dignity of the people of said State of Illinois, and contrary to the form of the statute in such case made and provided; and that the said J. S., late of C. aforesaid, in the county aforesaid, well knowing the said felony to have been by the said A. so as aforesaid done and committed, but contriving and intending unlawfully and unjustly to prevent the due course of law and justice in that behalf, and to cause and procure the said A. for the felony aforesaid to escape with impunity, afterward, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, unlawfully and for wicked gain's sake, did compound the said felony with the said J. N., the husband of the said A., and then and there did exact, take, receive and have of the said J. N. the sum of ten dollars, for and as a reward for compounding the said felony, and desisting from all further prosecution against the said A. for the felony aforesaid; and that the said J. S., on the day and year aforesaid, at C. aforesaid, in the county aforesaid, did thereupon desist, and from that time hitherto hath desisted from all prosecution of the said A. for the felony aforesaid; to the great hindrance of justice, and against, etc., and contrary to, etc. (Arch. 586.)

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(*b*) CONSPIRACY.

This forms the subject of section 104, of the Criminal Code.

*Decisions.* — *Slomer* v. *The People*, 25 Ill. 70; *Commw.* v. *Eastman*, 1 Cush. 189, 223; *Commw.* v. *Shedd*, 7 id. 514; *Commw.* v. *Hunt*, 4 Metc. 111, 125; *Rex* v. *Gill*, 2 Barn. & Ald. 204; but see *Reg.* v. *Parker*, 3 Q. B. 298; *Rex* v. *Biers*, 1 Adolp. & E. 327; *Reg.* v. *Gompertz*, 9 Q. B. 824; *Rex* v. *Peck*, 9 Adolp. & E. 686.

*Limitation* — eighteen months. *Penalty* — fine, not over $1,000; imprisonment, not over one year.

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1. *Indictment for conspiracy to indict parties for keeping a bawdy house.*

(R. S. 1845, ch. 30, § 104; Purp. 379; Scates, 392.)

That W. H., late of C., in the county of C., and J. P., late of the same place, wickedly devising and intending to injure one

T. T. and one J. W., and one G. G., heretofore, to wit, on the twenty-third day of April, in the year of our Lord ——, at C., aforesaid, in the county aforesaid, with force and arms did conspire, combine, confederate and agree together, falsely and maliciously to accuse, charge and indict the said T. T., J. W. and G. G., together with one M. T., one S. W. and one M. L., for keeping a common bawdy house; and the jurors aforesaid, etc., do further present, that in pursuance of the said conspiracy, the said W. H. and J. P. did, afterward, to wit, on the day and year aforesaid, in the Circuit Court of the county aforesaid, prefer a bill of indictment to a certain grand jury, then sworn and charged to inquire for the people of this State, to wit, the State of Illinois, for the body of the county of C., against the said T. T., J. W. and G. G., M. T., S. W. and M. L., for keeping a common bawdy house, and did then and there, cause the said grand jury to find and present the said indictment against the said T. T., J. W., G. G., M. T., S. W. and M. L., to the great damage of the said T. T., J. W., G. G., M. T., S. W. and M. L. and each of them, to the evil example of all others in the like case offending; against, etc., and contrary, etc. (See 2 Cox C. C. App. 25, for above form.)

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2. *Indictment for a conspiracy to charge a man with crime.* (Id.)

That J. S., late of C., in the county of C., and A., his wife, and J. W., late of the same place, and E. W., also of the same place, being evil disposed persons and wickedly devising and intending not only to deprive one J. N. of his good name, fame, credit and reputation, but also to subject them, as far as in them lay, to the pains and penalties by the laws of this State made and provided against and inflicted upon persons guilty of rape (*any crime*), on the first day of July, in the year of our Lord ——, with force and arms at C., aforesaid, in the county aforesaid, did, among themselves, conspire, combine, confederate and agree together, falsely and maliciously to charge and accuse the said J. N., that he, the said J. N., had then lately before (feloniously ravished and carnally known the said A., violently and against her will and consent); and the said jurors aforesaid,

etc., do further present, that the said J. S., and A., his wife, and J. W. and E. W., afterward, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, in pursuance of, and according to the said conspiracy, combination, confederacy and agreement among themselves, had as aforesaid (*here set out the overt acts*); and further to fulfill, perfect and bring to effect their most evil and wicked conspiracy, combination, confederacy and agreement at C. aforesaid, in the county aforesaid, maliciously did conspire, consult and agree with other false conspirators, to the jury aforesaid unknown, as aforesaid, against the form of the statute in such case made and provided, and against the peace, etc.; and the jurors aforesaid, etc., do further present, that in further pursuance of, and according to the said conspiracy, combination, confederacy and agreement among them, the said J. S. and A., his wife, and J. W. and E. W., had as aforesaid, they, the said, etc., on, etc., at, etc., in, etc., falsely and unlawfully, in the presence and hearing of divers persons, did charge and accuse the said J. N. with and of the rape aforesaid; and the jurors aforesaid, etc, do further present, that in further pursuance and according to the said conspiracy, combination, confederacy and agreement among them, the said J. S. and A., his wife, and J. W. and E. W., had as aforesaid, she, the said A., afterward, to wit, the day and year aforesaid, at C. aforesaid, in the county aforesaid, did, upon her oath, falsely charge and accuse the said J. N., before A. C., esquire, then and there being one of the justices of the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdeeds committed in the said county, that he, the said J. N., had then lately feloniously ravished and carnally known her, the said A., violently and against her will and consent; and the jurors aforesaid, etc., do further present, that in further pursuance of, and according to the said conspiracy, combination, confederacy and agreement among themselves, the said J. S. and A., his wife, by the name of A., the wife of J. S., afterward, to wit, at the —— Term for the year of our Lord——, holden at the court-house in C. aforesaid, in and for the county aforesaid, on the first Monday of ——, in the year aforesaid, before the Honorable A. B., Circuit Judge in and for the —— Judicial

Circuit of said State, of which circuit said county of C. forms part, did falsely and maliciously exhibit a certain bill, called a bill of indictment, against the said J. N., by the name of J. N., late of C., in the county of C., to P. C., esquire (*here insert the names of the grand jury*), good and lawful men of the said county, then and there sworn and charged to inquire for said people of this State for the body of said county; which said bill was, by the said jurors, then and there returned into said court, before the Honorable A. B., Circuit Judge as aforesaid, thus indorsed "not found," which said bill is in these words, that is to say (*here set out the indictment verbatim*), to the great damage and scandal, infamy and disgrace of the said J. N., to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 672, 673.)

NOTE.—*For a precedent charging forgery,* see 4 Went. 86; *for one as to sodomy,* C. C. C. 126; *for larceny,* id. 135, and 3 Bur. 1320; *for receiving stolen goods,* C. C. C. 125; *poisoning horses,* 4 Went. 98.

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(*m*) Unlawful assumption of office.

This misdemeanor is the subject of section 105 of the Criminal Code.

*Decisions*—in Illinois none. *Penalty*—fine not over $200.

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1. *Indictment for unlawful assumption of office.*

(R. S. 1845, ch. 30, § 105; Purp. 379; Scates, 392.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, unlawfully, willfully and contemptuously did take upon himself to exercise the office of constable, without being lawfully authorized thereto, under and by virtue of the laws of the State of Illinois, to the hindrance of justice, in contempt of the people and laws of the State aforesaid; against, etc., and contrary, etc.

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(*n*) Embracery.

This offense is the subject of section 106 of the Criminal Code.

*Decisions*—none in Illinois.

*Limitation*—three years. *Penalty*—fine not over $500, and penitentiary not over one year.

Section 106 provides, that the juror taking money, etc., shall suffer like punishment, and be disqualified to act as a juror; section 106 extends to grand and petit jurors.

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1. *Indictment for embracery, by persuading a juror to give his verdict for defendant, and for soliciting other jurors to do the like.*

(R. S. 1845, ch. 30, § 106; Purp. 379; Scates, 392.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, knowing that a jury of the said county of C. was then duly returned, impaneled, and sworn to try a certain issue joined in the Circuit Court, then held and in session according to law, at C. aforesaid, within and for the county of C., between E. F., plaintiff, and G. H., defendant, in an action of contract; and then also knowing that a trial was to be had upon the said issue, on the first day of June, in the year aforesaid, before the said Circuit Court, then and there held for the said county of C., the said C. D. wickedly and unlawfully intending and devising to hinder a just and lawful trial of the said issue by the jurors aforesaid, returned, impaneled and sworn as aforesaid, to try the said issue, on the first day of June, in the year aforesaid, at C., in the county aforesaid, unlawfully, wickedly and unjustly, on behalf of the said G. H., the defendant in said cause, did solicit and persuade one L. J., one of the jurors of the said jury, returned, impaneled and sworn according to law for the trial of said issue, to appear, attend in favor of the said G. H., the said defendant in the said cause; and then and there did say and utter to the said L. J., one of the jurors as aforesaid, divers words and discourses by way of commendation, on behalf of the said G. H., the said defendant, and in disparagement of the said E. F., the plaintiff, and that the said C. D. did then and there unlawfully and corruptly move and desire the said L. J., to solicit and persuade the other jurors returned, impaneled and sworn to try the said issue, to give a verdict for the said G. H., the

defendant in the said cause, the said C. D. then and there well knowing, that the said L. J. was one of the jurors returned, impaneled and sworn to try the said issue [and that the jurors of the said jury, by reason of speaking and uttering the words and discourses aforesaid, did give their verdict for the said G. H., the said defendant in the cause aforesaid]; against, etc., and contrary, etc.

NOTE. — (See for above Tremain's Pleas of the Crown, 175; the part within brackets, though in the form, is not necessary, the crime is complete by the attempt, whether it succeed or not. 1 Hawkin's P. C., ch. 85, §§ 1, 2; Train & Heard, 194.)

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### (*o*) Common barratry.

This offense is the subject of section 107 of the Criminal Code.

*Decisions.* — None in Illinois, except *Newkirk* v. *Cone*, 18 Ill. 449, which decides that maintenance includes the common law offenses of champerty and barratry; *Commw.* v. *Davis*, 11 Peck. 432; *Rex* v. *Hardwick*, 1 Siderfin, 282; the case of the *Barrators*, 8 Rep. 36; *Commw.* v. *Tubbs*, 1 Cush. 3; and see *Commw.* v. *McCulloch*, 15 Mass. 227; *Parcel's Case*, Cro. Eliz. 195; *Palfrey's Case*, Cro. Jac. 527; Arch. Cr. Pl. 55; but see *Rex* v. *Cooper*, 2 Strange, 1246.

*Limitation* — eighteen months. *Penalty* — fine, $100; if an attorney, suspension from practice, not over six months. This offense may be tried by a justice of the peace. Law 1863, p. 54.

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#### 1. *Indictment for common barratry.*

(R. S. 1845, ch. 30, § 107; Purp. 379; Scates, 392.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C., in the county of C., and on divers other days and times between that day and the day of the finding of this indictment, at C. aforesaid, in the county aforesaid, divers quarrels, strifes, suits and controversies, among the honest and peaceable citizens of said State then and there on the days and times aforesaid, did move, procure, stir up and excite; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said C. D., at C. aforesaid, in the county aforesaid, on said days and times was and

still is, a common barrator; to the common nuisance of all the citizens of said State; against, etc., and contrary, etc.

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(*p*) MAINTENANCE.

This is the subject of section 108 of the Criminal Code.

*Decisions.* — *Newkirk* v. *Cone*, 18 Ill. 449; see 3 Greenl. Ev. § 180, 181; *Bayard* v. *McLane*, 3 Harrington, 139; *Findon* v. *Parker*, 11 Mees. & Wels. 679; *Kinney* v. *Brown*, 3 Ridg. 462.

*Limitation* — eighteen months. *Penalty* — same as in common barratry. This offense may be tried by justice. Law 1863, p. 54.

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1. *Indictment for maintenance.*

(R. S. 1845, ch. 30, § 108; Purp. 379; Scates, 392.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did unjustly and unlawfully maintain and uphold a certain suit, which was then and there in the (*here describe the court in which the action is pending*) between one E. F., plaintiff, and one J. N. defendant, in an action of contract, on behalf of the said E. F., against the said J. N., and then and there in and for the maintenance of said suit, did expend a large sum of money, to wit, the sum of one thousand dollars, to the manifest hindrance and disturbance of justice, to the great damage of said J. N.; against, etc., and contrary, etc.

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(*q*) EXTORTION.

This is the subject of section 109 of the Criminal Code.

*Decisions.* — *Pankey* v. *People*, 1 Scam. 80; *People* v. *Whaley*, 6 Cow. 661; *State* v. *Stotts*, 5 Blackf. 460; *Emory* v. *State*, 6 id. 106; *Leany* v. *State*, id. 403; *State* v. *Dickens*, Hayn, 406; *State* v. *Cogswell*, 3 Blackf. 54; *Halsey* v. *State*, 1 South. 324; *Spense* v. *Thompson*, 11 Ala. 746; *Lake's Case*, 2 Leon, 268; *Rex* v. *Burdett*, 1 Ld. Raym. 149; *Reg.* v. *Tiddeman*, 4 Cox C. C. 387.

*Limitation* — eighteen months. *Penalty* — fine, not over $200.

1. *Indictment against a constable for extortion.*

(R. S. 1845, ch. 30, § 109; Purp. 380; Scates, 393.)

That A. B., late of C., in the county of C., on the first day of July, in the year of our Lord ——, then being one of the constables of C. aforesaid, at C. aforesaid, in the county aforesaid, did take and arrest one E. F., by color of a certain warrant, commonly called a bench warrant, which the said A. B. then and there alleged to be in his possession; and that the said A. B. afterward, and while the said E. F. so remained in his custody as aforesaid, to wit, on the day and year aforesaid, at C. aforesaid, in the county aforesaid, unlawfully, willfully, corruptly, deceitfully, extortiously, and by color of his said office, did extort, receive, and take of, and from the said J. N., the sum of ten dollars, as, and for a fee due to the said A. B., as such constable as aforesaid, for the obtaining and discharging of the said warrant, as the said A. B. then and there alleged; whereas, in truth and in fact, no fee whatever was then due from the said J. N. to the said A. B., as such constable aforesaid, in that behalf; to the evil and pernicious example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 581.)

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(*r*) Malfeasance, etc., of officers.

This forms the subject of section 110 of the Criminal Code.

*Decisions* — *Wickersham* v. *People*, 1 Scam. 128; *Jones* v. *People*, 2 id. 477; *Eyman* v. *People*, 1 Gilm. 4.

*Limitation* — eighteen months. *Penalty* — fine not over $200; the court, on recommendation of the jury, may adjudge removal from office.

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1. *Indictment for misconduct of officer.*

(R. S. 1845, ch. 30, § 110; Purp. 380; Scates, 393.)

(*Proceed as in No.* 2, § 94, *ante, as far as* *, *and go on thus:*)

And the jurors aforesaid, etc., do further present, that the said J. S., late of C. aforesaid, in the county aforesaid, so being one of the constables of C. as aforesaid, and being so commanded by the said A. C., the said justice as aforesaid, then and there unlawfully, willfully, corruptly and contemptuously did neglect, and refuse to convey the said J. N. to the said jail, as

he, the said J. N., by virtue of his office aforesaid, by law should and ought to have done, to the palpable omission of his said duty as constable, to the great hindrance of justice, to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 582.)

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(*s*) THREATENING LETTER.

This is the subject of section 111 of the Criminal Code.

*Decisions* — none in Illinois. *Reg.* v. *Tiddeman*, 4 Cox C. C. 387; *Rex* v. *Norton*, 8 Carr. & P. 186; *Rex* v. *Tucker*, 1 Mo. C. C. 134; *Rex* v. *Lloyd*, 2 East P. C. 1123; *R.* v. *Dunkley*, 1 Mo. C. C. 90; *R.* v. *Paddle*, R. & R. 484; *R.* v. *Major*, 2 East P. C. 1118; *R.* v. *Goodwood*, id. 1121.

*Limitation* — eighteen months. *Penalty* — fine not over $500, and imprisonment not over six months.

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1. *Indictment for sending a letter demanding money.*

(R. S. 1845, ch. 30, § 111; Purp. 381; Scates, 393.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C., aforesaid, in the county aforesaid, knowingly, feloniously and maliciously, did send (*or* "*deliver*") to one J. N., a certain letter, † (*or* "*writing*"), directed to the said J. N., by the name and description of Mr. J. N., * demanding money (*or goods, chattels or other valuable thing*), from the said J. N., with menaces, and without any reasonable or probable cause, and which said letter is as follows, that is to say (*here set out the letter verbatim*); against, etc., and contrary, etc. (Arch. 606.)

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2. *Same for threatening to accuse of crime, with intent, etc.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

and thereby feloniously, knowingly and maliciously did threaten the said J. N., to accuse him of having [attempted or endeavored to commit the abominable crime of sodomy, with the said J. S., with a view and intent thereby, then and there to extort and gain money] from the said J. N.; against, etc., and contrary, etc. (Arch. 608.)

3. *Same for sending a letter threatening to accuse with intent, etc.*

(*Use No.* 1 *to* *, *and go on thus:*)

threatening to accuse him, the said J. N., of having (*use No.* 2 *between brackets* [ ]) from the said J. N., and which said letter is as follows, that is to say (*here set out the letter verbatim*); against, etc., and contrary, etc. (Arch. 608.)

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4. *Indictment for sending a letter threatening to kill.* (Id.)

(*Use No.* 1 *to* †, *and go on thus:*)

without any name or signature thereto described, directed to the said J. N., by the name and description of Mr. J. N., threatening to kill and murder the said J. N., a citizen of this State, to wit, the State aforesaid, then and there being, which said letter is as follows, that is to say (*here copy the letter verbatim*); against, etc., and contrary, etc. (Arch. 610.)

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## Section 8. Offenses against the Public Peace and Tranquility.

This section forms the subject of Division X of the Criminal Code, sections 112–120, inclusive.

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### (*a*) Disturbing the peace.

This is the subject of section 112 of the Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — eighteen months. *Penalty* — fine not over $50, or imprisonment not over two months. This offense may be tried by a justice of the peace. Law 1863, p. 54.

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1. *Indictment for disturbing the peace of a family.*

(R. S. 1845, ch. 30, § 112; Purp. 381; Scates, 393.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully and maliciously did, at a late and unusual hour of the night-time of said day, to wit, about

the hour of eleven of the clock, in the night-time aforesaid, of the day aforesaid, disturb the family of J. N., a citizen then and there residing, by making unusual noises, to wit, howling, hallooing and screaming in the public street, near the residence of said J. N. and his family, then and there, to the great discomfort and disquiet of said J. N. and his family aforesaid, in contempt of the laws of this State, and to the evil example of all others in the like case offending; against, etc., and contrary, etc.

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(*b*) UNLAWFUL ASSEMBLAGE REFUSING TO DISPERSE.

This is the subject of section 113 of the Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — eighteen months. *Penalty* — each person fine not over $50, and imprisoned not over one month.

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1. *Indictment for unlawful assemblage refusing to disperse, etc.*

(R. S. 1845, ch. 30, § 113; Purp. 381; Scates, 394.)

That J. S., late of C., in the county of C., J. W., late of the same place, and E. W., also late of the same place, together with divers other evil disposed persons to the jurors aforesaid unknown, on the third day of August, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, * unlawfully, riotously and tumultuously did assemble together to the disturbance of the public peace. And the said J. S., J. W., E. W., and said other persons to the jurors aforesaid unknown, being so unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace as aforesaid afterward, and while they were so assembled as aforesaid, to wit, on the day and year aforesaid, in the county aforesaid, one A. C., esquire, then being a justice of the peace in and for the county aforesaid, and having authority to hear and determine divers felonies, trespasses, and other misdeeds in the said county, as near to them the said J. S., J. W., E. W., and the said other persons to the jurors aforesaid unknown, so unlawfully, riotously, and tumultuously assembled as aforesaid, as he, the said A. C., could then and there safely come, did

then and there command, and cause to be commanded, silence to be while proclamation was making, and that the said A. C. after that, did then and there, as near to them the said J. S., J. W., E. W., and the said other persons so assembled as aforesaid, as he, the said A. C., could then and there safely come, openly, and with a loud voice, commanded them in the name of the people of the State aforesaid to disperse themselves, and peaceably depart to their habitations, or to their lawful business. And the jurors aforesaid, etc., do further present, that the said J. S., J. W., E. W., and the said other persons to the jurors aforesaid unknown, being so required and commanded by the said A. C., the justice aforesaid, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, did then and there, with force and arms, notwithstanding the said command so given as aforesaid, feloniously, unlawfully, riotously and tumultuously remain and continue together for a considerable space of time, after such command so made by the said A. C., justice of the peace as aforesaid, in contempt of the people, etc., and the law, to the great disturbance and terror of the quiet and peaceable citizens of C. aforesaid, to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 595.)

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### (*c*) Unlawful assemblage.

This misdemeanor forms the subject of section 115, of the Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — eighteen months. *Penalty* — fine, not over fifty dollars, or imprisonment not over three months. This offense may be tried by a justice of the peace. (See Law 1863, p. 54.)

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1. *Indictment for an unlawful assemblage.*

(R. S. 1845, ch. 30, § 115; Purp. 381; Scates, 394.)

(*Use No.* 1, *under section* 113, *to* *, *and go on thus:*)

with sticks, stones and other offensive weapons, unlawfully, riotously and routously did assemble and gather together, with

intent unlawfully and riotously to demolish and pull down the dwelling-house of one J. N., there situate, and being so assembled and gathered together, armed as last aforesaid, did then and there unlawfully, riotously and routously make a great noise and disturbance, and did then and there remain and continue armed as last aforesaid, making such noise, riot and disturbance, for a considerable space of time then next following, to the great disturbance and terror, not only of the citizens of said State there being and residing, but of all other citizens then passing and repassing in and along the common highway there; in contempt of the people, etc., and the law, to the evil example of all others in like case offending; against, etc., and contrary, etc. (Arch. 592.)

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### (*d*) ROUT.

This misdemeanor is the subject of section 116, of the Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — eighteen months. *Penalty* — each fined not over seventy dollars, or imprisonment not over four months. May be tried by justice of the peace. (See Law 1863, p. 54; Gross, 250.)

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#### 1. *Indictment for a rout.*

(R. S. 1845, ch. 30, § 116; Purp. 381; Scates, 394.)

That J. S., late of C., in the county of C., J. W., of the same place and E. W., also of the same place, together with other evil disposed persons, to the jurors aforesaid unknown, on the first day of July, in the year of our Lord ——, at C., aforesaid, in the county aforesaid, with force and arms, * unlawfully, routously and riotously did assemble and gather together to demolish and pull down the dwelling-house of J. N., there situate, upon a common cause of quarrel, and did make attempts and advances to demolish and pull down the same, in contempt of the people aforesaid and the law, to the great disturbance and terror of quiet and peaceable citizens, to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 597.)

(*e*) Riot.

This misdemeanor is the subject of section 117 of the Criminal Code.

*Decisions.*— *Whitesides* v. *People*, Bre. 4; *Dougherty* v. *People*, 4 Scam. 179; *Smith* v. *People*, 25 Ill. 17; *Freeland* v *People*, 16 id. 380; *Severin* v. *People*, 37 id. 422.

*Limitation* — eighteen months. *Penalty* — fine not over $200, or imprisonment not over six months.

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1. *Indictment for riot.*

(R. S. 1845, ch. 30, § 117; Purp. 381; Scates, 394.)

The grand jurors, chosen, selected and sworn in and for the county of ——, in the name and by the authority of the State of ——, upon their oaths present, that J. S. and R. D., both late of the county aforesaid, on the —— day of ——, in the year of our Lord ——, at the county of —— aforesaid, unlawfully, riotously and tumultuously, with force and violence, did make an assault upon one J. F., and then and there unlawfully, riotously, and with force and violence beat, bruised and otherwise ill-treated the said J. F.; contrary, etc.

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(*f*) Officer neglecting to prevent a duel.

This offense is the subject of section 118 of the Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — eighteen months. *Penalty* — fine not over $100, may be tried by a justice of the peace. (Laws 1863, p. 54.)

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1. *Indictment for not attempting to prevent a duel.*

(R. S. 1845, ch. 30, § 118; Purp. 381; Scates, 393.)

That on the first day of July, in the year of our Lord ——, at C., in the county of A., J. S. then and there was a constable of C. aforesaid, and by virtue of his said office was a conservator of the peace, then and there was bound to preserve

the public peace of the people of the State aforesaid; then and there had knowledge and information of the intention of one J. T., late of C. aforesaid, and one J. W., also late of the same place, with deadly weapons, to wit, with pistols, to fight a duel, with and against each other, on the day and year aforesaid, at C. aforesaid, in the county aforesaid. And the jurors aforesaid, etc., do further present, that said J. S., late of C. aforesaid, in the county aforesaid, afterward, to wit, on the day and year aforesaid, then being a conservator of the peace, and bound as such conservator of the peace to preserve the public peace, not regarding his duty in that behalf to preserve the public peace, and prevent a breach of the same by the duel aforesaid, and to arrest the said J. T. and J. W. aforesaid, unlawfully, willfully and contemptuously neglected to exert his official authority, and arrest J. T. and J. W. aforesaid, and prevent the fighting of the duel aforesaid, as he was legally bound to do, contrary to his duty aforesaid in that behalf; in manifest contempt and delay of justice; against, etc., and contrary, etc.

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### (*g*) POSTING COWARDICE.

This offense is the subject of section 119, of the Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — eighteen months. *Penalty* — fine, not over $500, or imprisonment not over three months; printer or publisher refusing to testify deemed guilty of flagrant contempt of court, and may be fined and imprisoned, or either.

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1. *Indictment for posting another for not fighting a duel.*

(R. S. 1845, ch. 30, § 119; Purp. 382; Scates, 394.)

That A. B., late of C., in the county of C., on the first day of June, in the year of our Lord ——, with force and arms at C., aforesaid, in the county aforesaid, wickedly, willfully, maliciously and unlawfully did challenge one C. D. to fight a duel with and against the said A. B., with deadly weapons, to wit, with pistols, and that, the said C. D. having then and there refused to fight the duel aforesaid, with the said A. B., in pur-

suance of the challenge aforesaid, the said A. B. afterward, on the same day and year aforesaid, at C. aforesaid, in the county aforesaid, did wickedly, maliciously and unlawfully post and expose the said C. D. to public reproach, by then and there placing and exposing to public view, to wit, on the city hall, in C., aforesaid, in the county aforesaid, a certain writing with the name of the said A. B. thereunto subscribed, containing reproachful and contemptuous language to and concerning the said C. D., which writing is of the tenor following, that is to say (*here insert a copy*); against, etc., and contrary, etc. (Train & Heard, 181.)

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(*h*) Libel.

This forms the subject of section 120, of the Criminal Code.

*Decisions* — none in Illinois. *Comm.* v. *Wright*, 1 Cush. 46; *Comm.* v. *Tarbox*, 1 id. 66; *Wright* v. *Clements*, 3 Barn. & Ald. 503; *Tabart* v. *Piper*, 1 Camp. 350, 353; *U. S.* v. *Britton*, 2 Mason, 464; *Zenobio* v. *Astal*, 6 T. R. 132; *Comm.* v. *Snelling*, 15 Pick. 321; *State* v. *Henderson*, 1 Richardson, 179; *Rex* v. *Burdett*, 1 B. & Ald. 95; *Rex* v. *Hunt*, 2 Camp. 583; *Taylor* v. *State*, 4 Geo. 14.

*Limitation* — eighteen months. *Penalty* — fine, not over $500, or imprisonment not over one year.

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1. *Indictment for libel.*

(R. S. 1845, ch. 30, § 120; Purp. 382; Scates, 394.)

That A. B., late of C., in the county of C., contriving, and unlawfully, wickedly and maliciously intending, to injure, vilify and prejudice one E. F., and to deprive him of his good name, fame, credit and reputation, and to bring him into great contempt, scandal, infamy and disgrace, on the first day of July, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, * unlawfully, wickedly and maliciously did write and publish, and cause and procure to be written and published, a false, scandalous, malicious and defamatory libel, in the form of a letter directed to the said E. F. (*if the publication were in any other manner, omit the words "in the form of"*),

containing divers false, scandalous, malicious and defamatory matters and things of and concerning the said E. F., and of and concerning, etc. (*here insert such of the subject of the libel, as it may be necessary to refer to, by the innuendoes, in setting out the libel*), according to the tenor and effect following, that is to say (*here set out the libel and innuendoes*), he, the said A. B., then and there well knowing the said defamatory libel to be false, to the great damage, scandal and disgrace of the said E. F., to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 612.)

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2. *Indictment for hanging a man in effigy.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

unlawfully, willfully and maliciously did make, and cause and procure to be made a certain gibbet and gallows, and also a certain effigy and figure, intended to represent one E. F., and then and there unlawfully, wickedly and maliciously did erect, set up and fix, and cause and procure to be erected, set up and fixed, the said gibbet and gallows, in a certain yard and place near unto a certain common highway, there situate, called ——, and near to a certain ferry called the Horse ferry, where the said E. F. was used and accustomed to ply in the way of his trade and business of a waterman; and then and there unlawfully, wickedly and maliciously did hang up and suspend, and cause and procure to be hung up and suspended, the said effigy and figure to and upon the said gibbet and gallows, with the name of the said E. F. inscribed on a piece of wood, and affixed to the said effigy and figure, with divers scandalous inscriptions and devices affixed upon and about the same, reflecting on the character of the said E. F., and did then and there keep and continue, and cause and procure to be kept and continued the said gibbet and gallows, so erected and set up as aforesaid, with the said effigy and figure hung up and suspended to and from the same as aforesaid, for a long space of time, to wit, for the space of —— days, then next following, and during all that time unlawfully, wickedly, and maliciously did then and there publish and expose the said gibbet and gallows with the said

effigy and figure thereon, to the sight and view of divers good and worthy citizens of said State, passing and repassing in and along the highway aforesaid, to the great scandal, infamy and disgrace of the said E. F., to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 617, 618.)

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(*i*) Seditious riots.

These are the subject of the act of 1847, page 84, sections 1–7. See Purp. 1268, 1269; Scates, 1117. This act was originally limited to two years from its date, but before the two years expired was made perpetual. See Laws 1849, p. 131; Purp. 1269; Scates, 1117.

*Decisions* — none.

*Limitations* — as to sections 1, 2, 3, 4, three years; as to section five, eighteen months. *Penalty* — under sections 1–4, penitentiary not less than one year nor more than three years. Under section 5, fine not over $100, or county jail not more than three months.

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1. *Indictment for riot with battery to extort confessions.*

(Laws 1847, p. 84, § 1; Purp. 1268; Scates, 1117; Gross, 165.)

That J. S., late of C., in the county of C., J. W., late of same place, E. W., also late of same place, together with divers other evil disposed persons to the jurors aforesaid unknown, on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, feloniously, unlawfully, riotously, tumultuously and rontously did assemble and gather together to the great disturbance of the public peace, and being then and there so assembled and gathered together, in and upon one J. N. then and there being, unlawfully, riotously and feloniously did make an assault,† and him, the said J. N., then and there did beat, wound and ill-treat,* with intent to extort and obtain of and from him, the said J. N., a confession tending to criminate him, the said J. N., and other wrongs to the said J. N. then and there unlawfully, rioutously and feloniously did; against, etc.

2. *Same for riot to compel a person to leave the State.* (Id. § 2, id.)

(*Use No.* 1, *above, to* *, *and go on thus:*)

with intent to compel the said J. N. to leave this State, to wit, the State aforesaid (*or county*), against the will of said J. N., and other wrongs, etc. (*conclude as in No.* 1).

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3. *Same for lynch law.* (Id. § 3, id.)

(*Use No.* 1 *to* †, *and go on thus:*)

and him, the said J. N., then and there unlawfully, tumultuously, riotously and feloniously did detain, and then and there the said J. S., J. W. and E. W., and the said other persons to the jurors aforesaid unknown, did unlawfully, tumultuously, riotously and feloniously then and there, him, the said J. N., try for a pretended (*or real*) offense (*naming it, or for being a person of bad repute*), the said J. S., J. W. and E. W., and the said other persons to the jurors aforesaid unknown, then and there having no lawful authority, him, the said J. N., so to try, and other wrongs, etc. (*conclude as in No.* 1).

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4. *Same for riot and assault on persons in authority.* (Id. § 4, id.)

(*Use No.* 1 *to* †, *and go on thus:*)

he, the said J. N., having been a grand juror of the county aforesaid, and having in the performance of his duty as such grand juror, informed the grand jury of said county against the said J. S., J. W. and E. W. for an attempt to commit felony, and other wrongs, etc. (*conclude as in No.* 1).

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5. *Same for riot with threats of violence.* (Id. § 5, id.)

(*Use No.* 1 *to* †, *and go on thus:*)

and said J. N. then and there being, did threaten violence and harm to the body of said J. N. (*or the property of, etc.*) with intent to extort and obtain from said J. N. a confession of having committed a crime (*or any of the things in said section* 5); against, etc.

(*j*) Prize fighting and boxing exhibitions.

This is the subject of a Law of 1869, p. 80, "*An act to prevent prize fighting and sparring or boxing exhibitions;*" and also of section 3 of "*An act in relation to the Criminal Code of this State, and amendments thereof,*" Laws of 1869, p. 191 (Bradwell's edition).

*Section* 1 of the first above-mentioned laws provides against any person (1) sending, causing to be sent, published or otherwise made known, any challenge to fight what is commonly called a prize fight; (2) or who accepts such challenge, or engages in such fight; (3) or goes into training for such fight; (4) or acts as trainer for any one contemplating to engage in it; (5) and any aider, abettor, backer, umpire, trainer, second, surgeon, assistant, or reporter at the fight, or in preparation for it.

*Section* 2 of same law makes it a misdemeanor for any person to be in any way connected with any sparring or boxing exhibitions.

*Section* 4 of the act second above mentioned prohibits, as to prize fights, every person from (1) fighting same in this State; (2) or agreeing in this State to fight a prize fight in or out of it; (3) or training in this State to fight same; (4) or shall go or attempt to go out of this State to fight in any other State, place or territory; (5) or shall in any way aid or abet, in or out of the State, any prize fight. Each of these acts is made a high misdemeanor.

*Limitation*—as to said laws, each offense is eighteen months. *Penalty*—under section 1, on conviction, penitentiary not less than one year nor more than ten years; under section 2, on conviction, fine not less than $100 nor more than $1,000, and confinement in county jail not less than thirty days nor more than one year; under section 4 above, on conviction, confinement in county jail not less than six months nor over one year, and fine not less than $500 nor more than $1,000.

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1. *Indictment for challenging to fight a prize fight.*

(Law of 1869, p. 80, § 1.)

The jurors, etc., present that J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, with

force and arms, at C. aforesaid, in the county aforesaid, unlawfully, willfully and maliciously did * send a certain written message to one J. N., purporting and intended to be a challenge to the said J. N. to fight to and with him what is commonly called a prize fight, to the evil example of all others in the like case offending; against the peace, etc., and contrary, etc. (Train & Heard, 181, altered.)

N. B.—An indictment lies for any publishing of such prize fight, also for accepting the challenge, also engaging in the fight, training for it; the trainer also is liable, and all aiders and participators. The indictments as to dueling will guide the pleader. (See sections 43 to 45, Criminal Code, *ante*.)

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2. *Indictment for being engaged in sparring exhibitions.* (Id. § 2.)

(*Use No.* 1 *to* *, *and go on thus:*)

engage as a performer and exhibitor in what is commonly called a sparring exhibition, to the evil example of all others in the like case offending; against, etc., and contrary, etc.

N. B.—An indictment can be readily formed from No. 1 last above, using the directions, and omitting the words "sparring exhibition" and substituting "boxing exhibition," and concluding as above.

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3. *Indictment for fighting a prize fight.*

(Law 1869, p. 191, § 3.)

(*Use No.* 1 *above to* *, *and go on thus*:)

under and by a previous appointment and engagement made within this State, to wit, at C. aforesaid, in the county aforesaid, with one J. N., to fight what is commonly called a prize fight to and between them, unlawfully, willfully and maliciously did then and there, with and between themselves, fight a prize fight commonly so called, to the evil example of all others in the like case offending; against, etc., and contrary, etc.

N. B.—This section (4) makes it indictable, as stated at heading of this section, any one of which can be formed from the above and the indictments under dueling, *ante*.

## Section 9. Offenses Against the Public Morality, Health and Police.

These offenses are the subject of Division XI. of the Criminal Code, and may be classed under the heads of

I. Lewdness.
II. Gaming.
III. Selling liquor.
IV. Roads.
V. Disease.
VI. Miscellaneous.
VII. Elections.
VIII. Sunday.
IX. Game.

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## I. LEWDNESS.

### (*a*) Bigamy.

This offense is the subject of section 121, of Criminal Code.

*Decisions.* — *Jackson* v. *People*, 2 Scam, 231. This offense in some of the books is termed *polygamy*. *State* v. *Bray*, 13 Iredell, 289; *State* v. *Kean*, 10 N. H. 347; *Rex* v. *Deely*, 1 Moo. C. C. 303; *Murray* v. *Reg.*, 7 Q. B. 700; and see *State* v. *Palmer*, 18 Verm. 570; *Commonwealth* v. *Hunt*, 4 Cush. 49; *Commonwealth* v. *Bradley*, 2 id. 553.

*Limitation* — three years. *Penalty* — fine, not over $1,000, and penitentiary not over two years. This crime is infamous. (See § 174, Code.)

See as to evidence, Laws of 1854, § 1, p. 203; Purp. 391; Scates, 420.

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#### 1. *Indictment for bigamy.*

(R. S. 1845, ch. 30, § 121; Purp. 383; Scates, 395.)

That J. S., late of C., in the county of C., on the first day of April, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did marry one A. C., spinster, and her, the said A. C., then and there had for his wife; and that the said J. S. afterward, to wit, on the third day of August, in the year of our Lord ——, at F., in the county of L., feloniously and unlawfully did marry and take to wife one M. L., and to her, the said M. L. was then and there married, the said J. S. well knowing the said A. C., his former wife, was then alive, and the said J. S. never having been legally divorced from the said

A. C.; against the peace, etc., and contrary, etc; and the jurors, aforesaid, etc., do further present, that the said J. S. afterward, to wit, on the 10th day of August, in the year last aforesaid, at C. aforesaid, in the county aforesaid, was apprehended (or *that the said J. S. is now in custody at C. aforesaid, in the county of C. aforesaid*) for the felony aforesaid; against, etc., and contrary, etc. (Arch. 629.)

NOTE. — The averment of apprehension is only necessary where the second marriage did not take place in the county where the prisoner is indicted; in that case it is essential. (*Rex* v. *Fraser*, 1 Moo. C. C. 407.) Where the indictment is found in a different county from that where the offense was committed, it must allege custody in the county of the finding. (*Reg.* v. *Whiley*, 2 Moo. C. C. 186.)

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### (*b*) UNMARRIED PERSON KNOWINGLY MARRYING A MARRIED PERSON.

This offense is the subject of section 122, of the Criminal Code.

*Decisions* — none in Illinois.

*Limitation* — eighteen months. *Penalty* — fine not over $500, or imprisonment not over one year.

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1. *Indictment for an unmarried man marrying the wife of another.*

(R. S. 1845, ch. 30, § 122; Purp. 383; Scates, 395.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C., in the county aforesaid, he, the said J. S., being then and there an unmarried man, unlawfully, then and there did marry and take to wife one A. B., then and there well knowing the said A. B. to be a married woman, and that she was then and there the wife of one C. D., and not divorced from said C. D.; against, etc., and contrary, etc.

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### (*c*) ADULTERY AND FORNICATION.

These offenses are the subject of section 123 of the Criminal Code; also, as to white and colored persons, of the statute of 1844–5, p. 33, § 1; Purp. 389; Scates, 418.

*Decisions* on § 123, *Searls* v. *People*, 13 Ill. 597; *Besimer* v. *People*, 15 id. 439. On the above law of 1844–5 — none.

*Limitation* — under section 123, eighteen months; under Law of 1844–5, three years. *Penalty* — under section 123, fine not over $200 each person, or imprisonment not over six months; for second offense, twice as much as former punishment; for third offense, treble, each succeeding offense thus increasing. Under Law of 1844–5, each fined not over $500, and penitentiary not over one year; second offense, double; third offense, treble, each succeeding offense thus increasing.

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1. *Indictment for adultery and fornication.*

(R. S. 1845, ch. 30, § 123; Purp. 363; Scates, 395.)

That J. S. and E. F., both late of the county of ——, on the —— day of ——, in the year of our Lord, ——, at the county of ——, aforesaid, did then and there unlawfully live together in an open state of adultery and fornication. The said J. S. being then and there a single and unmarried man, and the said E. F. being then and there a married woman; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Illinois.

NOTE. — If both are unmarried, the offense should be charged as fornication. If both are married, adultery. If one married and one single, adultery and fornication.

2. *For adultery and fornication of white and colored persons.*

(R. S. 1845, ch. 74, § 23, and Laws of 1844–5, p. 33, § 1; Purp. 389; Scates, 418.)

That A. B., late of C., in the county of C., a black man being, and C. D., late of same place, a single and unmarried white woman being, on the first day of July, in the year of our Lord, ——, at C. aforesaid, in the county aforesaid, and from that day continually to the first day of July, in the year aforesaid, did live and dwell together, openly and notoriously associate and cohabit together, as man and wife, and have carnal knowledge of their bodies, the said A. B. then and there being a married man, and then and there having a lawful wife alive, other than the said C. D., and the said A. B. and the said C. D. then and there not being lawfully married to each other; against, etc., and contrary, etc.

(*d*) INCESTUOUS INTERCOURSE AND INCEST.

This forms the subject of sections 124, 125 and 126 of the Criminal Code.

*Decisions.*—*Bergen* v. *People*, 17 Ill. 426; *Commw.* v. *Goodhue*, 3 Metc. 193; *Same* v. *Dunn*, 19 Pick. 479.

*Limitation*—for both offenses, three years. *Penalty*—for incestuous intercourse, section 125, penitentiary not over ten years; for incest under section 126, penitentiary not over twenty years. Incest is infamous under section 174 of the Criminal Code.

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1. *Indictment for incestuous intercourse.*

(R. S. 1845, ch. 30, § 125; Purp. 384; Scates, 395.

That A. B., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did commit the crime of fornication, by then and there feloniously having carnal knowledge of the body of one C. B., the said A. B. and the said C. B., each being then and there single and unmarried, and the said A. B. and said C. B. not being then and there lawfully married to each other, and the said A. B. and C. B. each being then and there within the degrees of consanguinity, within which marriages are prohibited and declared by law to be incestuous and void, to wit, the said A. B. being then and there the brother of the said C. B., and the said C. B. being then and there the sister of the said A. B., and the said A. B. and C. B. both being then and there the children of one E. B. and D. B., the wife of the said E. B.; against, etc., and contrary, etc.

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2. *Indictment for incest.* (Id. § 126.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did commit the crime of incest by then and there rudely and licentiously cohabiting with, and then and there having carnal knowledge of the body of one E. D., the said C. D. then and there being a married man, having a wife living, other than the said E. D., and the said E. D. then and

there being a single and unmarried woman, and the said C. D. and E. D. not being then and there lawfully married to each other, and the said C. D. and E. D. each being then and there within the degrees of consanguinity within which marriages are prohibited and declared by law to be incestuous and void, to wit, the said C. D. being then and there the father of the said E. D., and the said E. D. being then and there the daughter of the said C. D.; against, etc., and contrary, etc.

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(*e*) Open lewdness, indecency and debauchery.

These offenses form the subject of section 127 of the Criminal Code. That section is as follows:

"If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior, every such person shall, on conviction, be fined, not exceeding one hundred dollars, or imprisoned not exceeding six months."

*Limitation* — eighteen months. *Penalty* — fine not over $100, or imprisonment not over six months.

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1. *Indictment for open lewdness.*

(R. S. 1845, ch. 30, § 127; Purp. 384; Scates, 395.)

That C. D., late of C., in the county of C., on the first day June, in the year of our Lord ——, at C., aforesaid, in the county aforesaid, was guilty of the crime of open and gross lewdness and lascivious behavior, by then and there (*here set forth the acts*). Contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the people of the State of Illinois.

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2. *Indictment for public indecency.* (Id.)

That C. D., late of C., in the county of C., devising and intending the morals of the citizens of said State to debauch and corrupt, on the first day of June, in the year of our Lord

——, at C. aforesaid, in the county aforesaid, on a certain public and common highway, there situate, in the presence of divers citizens of said State, then and there passing and repassing, unlawfully, wickedly and scandalously did expose to view, of the said persons so passing and repassing as aforesaid, the body and person of him, the said C. D., naked and uncovered for a long space of time, to wit, for the space of one hour, to the common nuisance, etc.; against, etc., and contrary, etc. (See Arch. 656, and Train & Heard, 351.)

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3. *Indictment for keeping open tippling-house on the Sabbath day.* (Id. § 127.)

This offense may be tried by a justice of the peace. (Laws 1863, p. 54, § 2.)

That one J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, the same day being the Sabbath day, at C. aforesaid, in the county aforesaid, did then and there * in the day-time of said day, so being the Sabbath day as aforesaid, unlawfully keep open a tippling-house; against, etc., and contrary, etc.

N. B. — The Supreme Court has decided that "open" means being open for the alleged purpose, the same as on a week day, not a partial being open. This case is one against *The City of Centralia*, not yet reported, but acted on in the 12th Circuit, Jefferson Co., at Mt. Vernon.

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4. *For same in the night-time of the Sabbath day.* (Id.)

(*Use No.* 3 *to* *, *and go on thus:*)

in the night-time of the said day, so being the Sabbath day, as aforesaid, unlawfully, keep open a tippling-house; against, etc., and contrary, etc.

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5. *For keeping a lewd house.* (Id.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at C. aforesaid, in the county aforesaid,* unlawfully did keep a certain lewd house, for the practice of fornication.

Another Form.

unlawfully did then and there keep a certain (*boat, shed or other place*) for the practice of fornication.

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6. *Indictment for keeping a common, ill-governed and disorderly house.* (Id.)

(*Use No. 5 to *, and go on thus:*)

unlawfully did keep a common, ill-governed and disorderly house, to the encouragement of certain persons, as well men as women, of evil name and fame and of dishonest conversation, to idleness, gaming, drinking, tippling and misbehaving themselves, to the common nuisance, etc. (*conclude as in next preceding precedent*). (Arch. 636.)

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7. *Another precedent for same.* (Id.)

(*Use No. 5 to *, and go on thus:*)

unlawfully did keep a common, ill-governed and disorderly house to the encouragement of idleness, and other misbehavior; against, etc., and contrary, etc.

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8. *Indictment for selling liquor on election day.*

(Laws 1861, p. 263, § 9.)

That one J. S., late of C., in the county of C., on the third day of November, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, the same being the day appointed by law for the election of governor and lieutenant-governor of the State aforesaid, and of other officers of said State, did then and there, and while said election was going on, unlawfully and willfully keep open for the sale at retail of intoxicating drinks, his bar-room there situate (*or did sell at retail intoxicating drinks, to wit, whisky, to wit, at his bar-room there situate, or did give away intoxicating drinks, to wit, whisky, to wit, at his bar-room there situate*); against, etc., and contrary, etc.

Note. — The limitation and penalty for selling liquor on election day is the same as under section 127 of the Criminal Code, *ante*. This offense may be tried by justice of the peace. See Laws 1863, p. 54, § 2.

## II. GAMING.

(*a*) PLAYING CARDS, DICE, AND THEIR IMPORTATION OR USE.

These offenses are the subject of section 173 of the Criminal Code.

*Decisions.*—None in Illinois.

*Limitation*—eighteen months. *Penalty*—fine not less than twenty-five dollars, nor more than fifty dollars. Justices of the peace may try these offenses under Laws of 1853, p. 54, § 2.

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1. *Indictment for importing billiard tables for sale.*

(R. S. 1845, ch. 30, § 128; Purp. 384; Scates, 396.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* unlawfully and willfully did import into this State one billiard table (*or —— packs of playing cards, any of the things named in section* 128), with intent, and for the purpose of selling and disposing of same in this State, the said billiard table being made for the purpose of being used at the game of billiards; against, etc., and contrary, etc.

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2. *Selling playing cards.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain pack of playing cards unlawfully did sell (*or did offer to sell*): against, etc.

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3. *Selling obscene books.* (Id.)

That J. S., late of C., in the county of C., being a scandalous and evil-disposed person, and devising, contriving, and intending as well the morals of youth as of divers other good citizens of this State to debauch and corrupt, and to raise and create in their minds inordinate and lustful desires, did, on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully, wickedly, maliciously, and scandalously sell (*or offer to sell*) to one J. N., a certain lewd,

wicked, scandalous, and obscene * book (*pamphlet or print*), entitled, etc. (*here set out its name*), to the manifest corruption of public morals, in contempt of the people and the law, to the evil example of all persons in the like case offending; against, etc., and contrary, etc. (Arch. 534.)

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4. *Selling obscene print.* (Id.)

(*Use No.* 3 *to* *, *and go on thus:*)
print, entitled, etc. (*here set out its name*), representing a man in an obscene, impudent, and indecent posture with a woman (*or such other description as it may have*), conclude as in No. 3 above. (Arch. 534.)

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(*b*) Keeping a common gaming house.

This offense is the subject of section 129 of the Criminal Code.

*Decisions—Stoltz* v. *People*, 4 Scam. 168.

*Limitations* — eighteen months. *Penalty* — fine not over $100, or imprisonment not over six months.

This misdemeanor may be tried by a justice of the peace under Laws of 1863, p. 54, § 2.

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1. *Indictment for keeping a common gaming house.*

(R. S. 1845, ch. 30, § 129; Purp. 384; Scates, 396.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, and on divers other days and times between that day and the day of taking this inquisition, at C. aforesaid, in the county aforesaid, unlawfully did for his gain keep a common gaming house; contrary, etc.

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2. *Permitting gaming.*

in a certain house then and there occupied by him, did then and there permit divers persons to frequent and come together to play for money at certain games; contrary, etc.

(*c*) GAMING.

This is the subject of section 130 of the Criminal Code.

*Decisions* — *Green* v. *People*, 21 Ill. 125; *Gibbons* v. *People*, 33 id. 442.

*Limitations* — eighteen months. *Penalty* — fine not over $100, nor less than $10. This offense may be tried by a justice of the peace. See Laws 1863, p. 54, § 2.

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1. *Indictment for gaming.*

(R. S. 1845, ch. 30, § 130; Purp. 384; Scates, 396.)

That one J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did unlawfully play at a game with cards for money; against, etc., and contrary etc.

NOTE.—This section (130) applies to cards, dice, checks and billiards, or any thing used for playing or betting upon, or winning or losing money, or any valuable thing.

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(*d*) TAVERN-KEEPER PERMITTING GAMING.

*Decisions* — none in Illinois.

*Limitations* — eighteen months. *Penalty* — fine not over $100, forfeiture of license and suspension of license for one year.

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1. *Indictment against tavern keeper for permitting gaming.*

(R. S. 1845, ch. 30, § 131; Purp. 384; Scates, 396.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, and on divers days and times between that day and the day of taking this inquisition, unlawfully and willfully did permit persons to come together to play at a game for money, at and in a tavern then and there kept by him, and licensed to him to keep then and there as such tavern; against, etc., and contrary, etc.

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2. *Indictment against officer neglecting to notify breaches of, etc.* (Id. § 131.)

NOTE.—The penalty under this section (131) against such officer is *fine* $100, and suspension from office one year.

That J. S., late of C., in the county of C., being one of the constables of C. aforesaid, in the county aforesaid, and as such

constable in duty bound to notify the proper authorities of offenses committed in said county contrary to the statutes in such cases made and provided, on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, well knew that J. S., keeper of a certain tavern then and there situate did permit persons to come together to play at a game for money, at and in his tavern aforesaid contrary to law, did unlawfully and willfully neglect and fail to notify the proper authorities in the county aforesaid, of the commission of the offense aforesaid by said J. S., contrary to his duty as such constable, to the hindrance of justice, and the evil example of all others in the like case offending; against, etc., and contrary, etc.

Note. — The above with proper variations will apply to all cases contemplated by said section 131. The offenses in this section (131) may be tried by a *justice of the peace.* See Laws of 1863, p. 64, § 2.

## III. SELLING LIQUOR.

This forms the subject of section 132 of the Criminal Code, also of R. S. 1845, § 15, p. 342; id. § 20, p. 343; id. § 133; Law of 1851, p. 18; Law of 1853, p. 127; repealing Law of 1851 and Law of 1853, p. 91. Observe section 132 makes the minimum quantity to be sold by persons not licensed to keep a grocery to be *one quart*, but the Law of 1853, p. 91, changes that minimum quantity to *one gallon.*

*Decisions on* § 177 — *Sullivan* v. *People*, 15 Ill. 235, corrected by *Bennett* v. *People*, 16 id. 161; *Cannady* v. *People*, 17 id. 159; *Johnson* v. *People*, Bre. 276; *Zareseller* v. *People*, 17 Ill. 101; *Rice* v. *People*, 38 id. 435; *Kimball* v. *People*, 20 id. 348; *O'Leary* v. *Cook Co.*, 28 id. 534; *Jones* v. *People*, 14 id. 198.

*Limitation* — for all above offenses eighteen months. *Penalty* — under section 132, each offense $10. Under R. S. 1845, p. 342, each offense $10 and costs of suit. Under R. S. 1845, p. 343, $3; for each offense of the first and second committal, loss of the debt; for third offense, fine $12, and rendered incapable of getting license for a grocery, or retailing liquor in this State. Under R. S. 1845, section 133, fine $10 each offense.

Note. — Each of the above offenses may be tried by justice of the peace, under Law of 1863, p. 54.

1. *Indictment for selling liquor in less quantity than one gallon, without grocery license.*

(R. S. 1845, ch. 30, § 132, and Laws of 1853, p. 91; Purp. 385 and 722; Scates, 397 and 419.)

That one J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* did unlawfully, *sell whisky*, (*brandy, rum or gin*) in a less quantity than one gallon, he, the said J. S., then and there not having a legal license to keep a grocery; against, etc., and contrary, etc.

NOTE. — Counts may be added for each of several offenses, and such is the usual practice.

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2. *Indictment for selling liquor on premises, without license.*

(R. S. 1845, p. 342, § 342; Purp. 719; Scates, 831.)

(*Use No.* 1 *to* *, *and go on thus:*)

unlawfully did, for his gain and benefit, permit and suffer spirituous liquors to be bartered on his premises, there situate, in a less quantity than one gallon, he, the said J. S., not having then and there a legal license to keep a groeery; against, etc., and contrary, etc. (An indictment for selling or exchanging liquor can readily be drawn from this precedent.)

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3. *Indictment against grocery keeper for harboring minors or servants.*

(R. S. 1845, p. 343, § 20; Purp. 720; Scates, 832.)

(*Use No.* 1 *to* *, *and go on thus:*)

unlawfully and willfully did harbor, trust and entertain one J. N., a minor, he, the said J. S., well knowing the said J. N. to be such minor as aforesaid, he, the said J. S., then and there being a grocery keeper; against, etc.

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4. *Indictment for selling liquor to an Indian.*

(R. S. 1845, ch. 30, § 133; Purp. 385; Scates, 397.)

(*Use No.* 1 *to* *, *and go on thus*) :

did unlawfully and willfully sell whisky to an Indian, he, the

said J. S., then and there being a tavern keeper; against, etc., and contrary, etc.

NOTE. — So much of this act as relates to blacks, mulattoes and slaves, is obsolete.

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## IV. ROADS.

### (*a*) Obstructing public roads and highways navigable, and other streams.

These offenses are the subject of section 134 of the Criminal Code, and also of R. S. 1845, p. 482, § 16, and Laws of 1852, p. 176, § 1.

*Decisions under section* 134. — *Keach* v. *People*, 22 Ill. 478; *Leech* v. *Waugh*, 24 id. 228; *Dimon* v. *People*, 17 id. 416; *Martin* v. *People*, 23 id. 395; *Martin* v. *People*, 13 id. 341; *Daniels* v. *People*, 21 id. 439; *Proctor* v. *Lewistown*, 25 id. 153; *Gentleman* v. *Soule*, 32 id. 271; *Gnebe* v. *Nichols*, 36 id. 92; *Clifford* v. *Eagletown*, 35 id. 444; *Jacksonville* v. *Holland*, 19 id. 271.

Under R. S. 1845, p. 482, § 16. See *McDonough County* v. *Markham*, 19 id. 142; *Crosby* v. *Gibbs*, id. 309; *Bickerage* v. *Dean*, 21 id. 199; *Sweny* v. *People*, 28 id. 208; *Lowe* v. *People*, 28 id. 518.

*Limitation* — eighteen months. *Penalty* — under section 134 fine not over $100. Abatement of nuisance may be ordered by the Circuit Court. Under R. S. 1845, p. 482, § 16, for obstructing road, etc., each offense $10, and $3 per day for each day it remains after order to remove; for destroying, etc., bridge, fine $5, nor over $100, except bridges which shall be double the value of it. Under Laws of 1852, p. 176, § 1, the penalty may be recovered by indictment or action of debt before justice of the peace, half penalty to informer, half to the county.

NOTE. — The offenses under section 134, and above Law of 1845, p. 482, § 16, may be tried before a justice of the peace, under Law of 1863, p. 54, § 2, when act not done in an incorporated town or city.

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#### 1. *Indictment for obstructing a highway.*

(R. S. 1845, ch. 30, § 134; Purp. 385; Scates, 397.)

That J. S., late of C., in the county of C., on the third day of August, in the year of our Lord ——, at C. aforesaid, in

county aforesaid, in a certain street there, called Leman street, being the people's common highway, used for all the citizens of the State aforesaid, with their horses, coaches, carts and carriages, to go, return, pass, repass, ride and labor at their free will and pleasure, unlawfully and injuriously did (*state the manner of obstruction, and space of time it lasted*), whereby the people's common highway aforesaid, then and there on each of the said other days and times, for and during all the time aforesaid (*being the time above stated*), then, and on each of said days respectively was obstructed, and straitened so that the citizens could not then, and on said other days and times go, return, pass, repass, ride and labor, with their horses, coaches, carts and other carriages, in, through and along the people's common highway aforesaid, as they ought, and were wont and accustomed to do, to the great damage, and common nuisance of all citizens going, returning, passing, repassing, riding and laboring in, through, and along the people's common highway aforesaid; to the evil example of all others in the like case offending; against, etc., and contrary, etc. (Arch. 640.)

NOTE. — See *note* at end of above precedent in Archbold, p. 640, for several references to precedents for obstructions which of course are very varied.

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2. *Indictment for obstructing a public navigable stream.* (Id.)

That the Illinois river, that is to say, that a certain part of the said river, lying and being in the county of C. aforesaid, is, and from the time whereof the memory of man is not to the contrary, hath been an ancient river, and the people's ancient and common highway for all the citizens of this State, with their steamboats, ships, barges, lighters, boats, wherries and other vessels, to navigate, sail, row, pass, repass and labor, at their will and pleasure, without any impediment or obstruction whatever; and the jurors aforesaid, etc., do further present, that J. S., late of C., in the county aforesaid, on the third day of August, in the year of our Lord ——, and on divers other days and times, between that day and the day of the finding of this indictment, with force and arms, at C. aforesaid, in the county aforesaid, unlawfully, willfully and injuriously did erect, fix, put, place and set up in the said river (*here state the mode of obstruc-*

*tion and the length of time of its continuance*) by means whereof the navigation and free passage of, in, through, along and upon the said Illinois river and the people's common highway, on the day and year aforesaid, and on the other days and times, hath been, and still is, greatly straitened, obstructed and confined, to wit, at C. aforesaid, in the county aforesaid, so that the citizens of said State, navigating, sailing, rowing, passing, repassing and laboring with their steamboats, ships, barges, lighters, boats, wherries and other vessels, in, through, along and upon the said river and the people's ancient and common highway there, on the same day and year aforesaid, and on the said other days and times, could not, nor yet can, go, navigate, sail, row, pass, repass and labor with their ships, barges, lighters, boats, wherries and other vessels, upon and about their lawful and necessary affairs and occasions, in, through, along and upon the said river and people's ancient and common highway there, in so free and uninterrupted a manner as of right they ought and before had been used and accustomed to do, to the great damage and common nuisance of all the citizens of said State, navigating, sailing, rowing, passing, repassing and laboring with their steamboats, ships, barges, lighters, boats, wherries and other vessels, in, through, along and upon the said Illinois river and people's ancient and common highway there, to the great obstruction to the trade and navigation of and upon the said river, to the evil example of all others in the like case offending, and against, etc., and contrary, etc. (Arch. 641.)

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3. *Indictment for nuisance by deleterious smoke and vapors.* (Id.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, † and on divers other days and times between that day and the day of the finding of this indictment, at C., in the county of C., unlawfully and injuriously did * erect and cause and procure to be erected, certain furnaces and ovens for the burning of coke, and did then and there unlawfully and injuriously cause and permit great quantities of smoke and sulphurous and other noxious, unwholesome and injurious vapor to arise from the said furnaces, and then and there to impregnate the air near and around said furnaces, and

then and there to enter the dwelling-houses there situate near the said furnaces, to the great damage and common nuisance of all persons then and there living and inhabiting near the said furnaces, and of all other persons then and there passing near the same; against, etc., and contrary, etc. (6 Cox C. C. Appen. p. 76; Train & Heard, 387, 388.)

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4. *Indictment for carrying on a trade offensive to the smell.*

(*Use No.* 3 *to* *, *and go on thus:*)

kill and cause to be killed, divers large numbers of horses, near to the dwelling-houses of divers persons, then and there inhabiting the same houses, and also near to a public road and highway there, and then and on the said other days and times, at C. aforesaid, in the county aforesaid, unlawfully and injuriously did cause and permit the skins, flesh, bones, blood, entrails, excrements and other filth of and from the said horses so killed, as aforesaid, to lie and remain near to the said dwelling-houses and near to the said public road and highway, for a long space of time, to wit, for the space of one week, whereby divers noisome and unwholesome smells did then and there arise from the said skins, flesh, bones, blood, entrails, excrements and other filth, so that the air was then and there greatly corrupted and infected thereby, to the great damage and common nuisance of the inhabitants of the said houses, and all other persons then and there passing upon and along said public road and highway; against, etc., and contrary, etc. (6 Cox C. C. Appen. 77; Train & Heard, 393.)

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5. *Indictment for carrying on an offensive trade.* (Id.)

(*Use No.* 3 *to* †, *and go on thus:*)

at C., in the county of C., near unto divers public streets, being the common highways, and also near unto the dwelling-houses of divers citizens of said State, there situate and being, unlawfully and injuriously did make, erect and set up, and did cause and procure to be made, erected and set up a certain furnace and boiler, for the purpose of boiling tripe, and other

entrails and offal of beasts; and that the said J. S., on the day and year aforesaid, and on divers other days * and times between that day and the day of taking this inquisition, at C. aforesaid, in the county aforesaid, unlawfully and injuriously did boil and cause and procure to be boiled, in the said boiler, divers large quantities of tripe and other entrails and offal of beasts; by reason of which said premises, divers noisome, offensive, and unwholesome smokes, smells, and stenches, during the time aforesaid, were from thence emitted and issued, so that the air then and there was, and yet is, greatly filled and impregnated with the said smokes, smells, and stenches, and was, and is, rendered and become, and was and is, corrupted, offensive, uncomfortable and unwholesome; to the great damage and common nuisance of all the citizens of said State there inhabiting, being and residing, and going, returning, and passing through the said streets and highways; and against, etc., and, etc.

*Second count for continuing the nuisance.* — And the jurors aforesaid, etc., do further present, that the said J. S., on the said first day of June, in the year aforesaid, and from that day until the day of the taking of this inquisition, at C. aforesaid, in the county aforesaid, a certain other furnace and boiler, for the purpose of boiling tripe and other entrails and offal of beasts, before that time made, erected, and set up by certain persons to the jurors aforesaid unknown, unlawfully and injuriously did continue, and yet doth continue; and that the said J. S., on the said first day of June, in the year aforesaid, and on divers other days, etc. (*as in the preceding count from the asterisk* [*] *to the end*). (Arch. 633.)

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6. *Indictment for polluting a water-course.* (Id.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, and on divers other days and times between that day and the day of the finding of this indictment, at C., in the county of C., did unlawfully and injuriously * convey, and cause and suffer to be drained and conveyed, great quantities of noxious and offensive liquid matters, scum and refuse, produced from the making of gas, and

of coal tar and coke, from certain premises of the said C. D. there situate, into a certain ancient stream of pure water there situate and flowing, and did thereby then and there pollute, corrupt and render unwholesome the water of the said stream, and make the same unfit to drink, to the great injury and common nuisance of all persons then and there residing near the said stream, and of all other persons then and there using the water thereof; and against, etc., and, etc. (6 Cox C. C. Appen. 76); and see *Rex* v. *Medley*, 6 C. & P. 229.

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7. *Indictment for diverting a water-course.* (Id.)

(*Use No.* 6 *to* *, *and go on thus:*)

divert and turn out of its ancient and accustomed channels and course, and cause and procure to be diverted a certain ancient water-course, and common stream of water there situate, and did then and there make and place, and cause and procure to be made and placed, a dam and embankment across the said stream, and did then and there and thereby deprive the inhabitants of said C. and all other persons using the said stream of water and water-courses of the said water, to the great damage and common nuisance of the said inhabitants and other persons; and against, etc., and, etc. (6 Cox C. C. Appen. 76.)

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8. *Indictment for obstructing a public road.*

(R. S. 1845, p. 479, § 16; Purp. 1043; Scates, 562.)

(*Use No.* 1 *to* *, *and go on thus:*)

with force and arms on that day, and on divers other days and times between that day and the day of finding this indictment, at C. aforesaid, in the county aforesaid, the public highway then leading from C. aforesaid into the town of ——, unlawfully and injuriously did obstruct and render inconvenient (*or dangerous*) to pass, that is to say, divers large pieces of timber and trees then and there did fall, put and falling place, and cause to be fallen, put and placed, and the same in and upon said public highway to remain from the said day and year first aforesaid until the finding of this indictment, and same has so permitted, and still does permit to remain, to the

great damage and common nuisance of all the citizens of said State, going, returning, passing, repassing, riding and laboring in, through and along said people's public highway aforesaid, to the evil example of all others in the like case offending; against, etc., and contrary, etc.

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## V. DISEASE.

Under this head may be classed R. S. 1845, ch. 30, § 135; and the act of February, 1851; Laws of 1851, p. 270, § 1; and see Laws of 1865, p. 126 §§ 1, 2; also Laws of 1867, p. 169, §§ 1, 2, 3; and Law of 1869, p. 72; also id. p. 190, § 8.

*Decisions* — none in Illinois. See 4 Cox C. C. Appen. 14, for a precedent of an *indictment "for selling a diseased cow in public market."*

*Limitation* — eighteen months under each of above statutes

*Penalty* — under Laws of 1851, above, fine, not over $100, or county jail, not over six months; section 135, Criminal Code, fine, not over $100, or county jail not over three months; Laws of 1865, section 1, fine, not over $100; under Laws of 1867, section 2, fine, not over $1,000, or be fined and imprisoned in county jail, in discretion of the court, imprisonment to be not over one year, and civil damages to the party injured. Under Laws of 1869, p. 72, § 3, breaches of §§ 1 and 2, the penalty is fine, on conviction, not less than $500 nor over $10,000, and county jail, in addition, at discretion of the court, not more than six months; under Law of 1869, p. 190, § 8, county jail not over one year, or be fined not more than $1,000, in discretion of the court.

NOTE. — The above offense under Laws of 1851, p. 270, R. S. 1845, ch. 30. § 135, Criminal Code and Laws of 1865, p. 126, may be of justice of peace cognizance, under Laws of 1865, § 1, p. 54.

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1. *Indictment for throwing a dead animal into a water-course.*

(Laws 1851, § 1, p. 270.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, * did unlawfully and injuriously the dead body of a dog throw into a certain ancient water-course and

stream of pure water, there situate and flowing, and the said dead body of the dog aforesaid, did then and there permit to remain, and did thereby then and there corrupt and render unwholesome the water of said stream and make the same unfit to drink, to the great damage and common nuisance of all persons then and there residing near the said stream, and of all other persons then and there using the water thereof; and against, etc., and contrary, etc. (See Train & Heard, 386.)

NOTE.— This statute mentions any water-course, lake, pond, spring, well or common sewer; the offense is a high misdemeanor.

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2. *Indictment for selling unwholesome meat.*

(R. S. 1845, ch. 30, § 135; Purp. 386; Scates, 397.)

(*Use No.* 1 *to* *, *and go on thus:*)

knowingly, willfully and maliciously did sell to one C. D. a certain quantity of diseased, corrupted and unwholesome provisions, to wit, ten pounds of diseased, corrupted and unwholesome beef, to be then and there used by the said C. D. for meat, the said J. S. not then and there making known to the said C. D. that the said beef was then and there diseased, corrupted and unwholesome, and the said A. B. then and there well knowing the same beef to be diseased, corrupted and unwholesome; against, etc., and contrary, etc. (See Train & Heard, 399.)

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3. *Indictment for selling adulterated liquors.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

knowingly, willfully and maliciously did sell to one C. D. a certain quantity of a fraudulently adulterated liquor, to wit, port wine, the said J. S. then and there well knowing the same to be adulterated; against, etc., and contrary, etc. (See Train & Heard, 400.)

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4. *Indictment for bringing diseased sheep into this State.*

(Laws 1865, p. 126, § 1.)

(*Use No.* 1 *to* *, *and go on thus:*)

knowingly, willfully, and maliciously did bring and cause to be brought into the State aforesaid, one hundred head of sheep

infected with contagious disease, the said J. S. then and there well knowing the said sheep to be infected with contagious disease; against, etc., and contrary, etc.

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5. *Indictment for bringing Texas cattle into the State.*

(Laws 1867, p. 169, §§ 1, 2.)

(*Use No.* 1 *to* *, *and proceed thus:*)

knowingly, willfully and unlawfully did bring, and cause to be brought into this State, to wit, the State of Illinois, one hundred head of Texas cattle, with intent that same should remain in said State; against, etc.

The statute under which the foregoing indictment is framed is repealed by Law of 1869, p. 72, § 11, with saving clause in favor of pending suits for injuries, and pending indictments, continuing the act in force as to them until finally disposed of, or prosecuted to final judgment, and further proviso in favor of the act so repealed, continuing in force for recovery of damages or losses which have accrued for violation of the act, whether such suit may now or hereafter be commenced, to continue in force as long as the time limited by law for such suits to be commenced and prosecuted to final judgment.

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6. *Indictment for bringing Texas or Cherokee cattle into this State.*

(Laws 1869, p. 72, § 1.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did unlawfully, willfully and maliciously * bring and cause to be brought into this State, to wit, the State of Illinois, one thousand head of what is commonly called Texas (or "Cherokee") cattle; against, etc., and contrary to, etc.

N. B. *Section* 1 applies to any person or persons, railroad company, or other corporation or association of persons, excepts "between first day of October and first day of March following of each year," and, under section nine, when such cattle were introduced into Kansas, Missouri, Nebraska, Iowa or Wisconsin, prior to the first day of January, before being brought into

this State. The certificate of county clerk is *prima facie* evidence where said cattle were wintered, burden of proof on defendant. This act provides for civil suits for damages to cattle by disease imported by such cattle, the object of the act is declared to be the prevention of spread of pestilence and disease among native cattle of this State, and to protect owners of such native cattle.

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7. *Indictment for having in possession Texas or Cherokee cattle.* (Id. § 2.)

(*Use No.* 6 *to* *, *and go on thus:*)

have in his possession one hundred head of what is commonly called Texas cattle, which said one hundred head of Texas cattle were not brought into this State, to wit, the State aforesaid, between the first day of October and the first day of March of the year aforesaid; against, etc., and contrary, etc.

N. B. *Section* 2 applies to same persons, etc., as section 1, and an indictment under section 2 lies for owning or having in possession or control such cattle "*at any time, which may have been brought into this State at any time, except between first day of October and first day of March following of each year.*"

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8. *Indictment for adulterating candies.*

(Laws 1869, p. 190, § 8.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord,——, at C. aforesaid, in the county aforesaid, being then and there engaged in the making and manufacturing of candies, did unlawfully, willfully and maliciously mix a certain destructive (or "poisonous liquid" or substance) liquid, called (*here name it, if the name is known; if not known to the grand jury, then say,* "the name of which is to the jurors aforesaid unknown") he, the said J. S., well knowing the same was destructive to life; against, etc., and contrary, etc.

NOTE.— An indictment lies for selling such candy, knowing same to be so mixed, under section eight of said act of 1869.

## VI. MISCELLANEOUS.

This head embraces sections 136 to 141 inclusive of the Criminal Code; also Laws of 1851, p. 111, § 2; Purp. 396; Scates, 135; and Laws of 1869, p. 27, as to pecan timber; id., p. 27, as to burying ground, §§ 1, 2; also p. 27, as to fair grounds, § 1.

*Decisions* — none, except under section 140. *Wentworth* v. *People*, 4 Scam. 550.

*Limitation* — eighteen months for all except section 139, clause 1, three years. *Penalty* — under section 136, for uttering unauthorized bill of credit, fine not over $300, imprisonment not over one year. Under section 137 defacing notice, etc., fine not over $50, or imprisonment not over one month; section 138 is of justice of peace cognizance; section 139, clause 1, having pick-lock, etc., penitentiary two years; section 139, clause 2, having offensive weapons, with intent, etc., fine not over $100, or imprisonment not over three months; under section 140, fine not less than $10, nor over $50; under section 141 fine not less than $100, nor over $500; under Laws of 1851, section 2, p. 111, fine not less than $10, nor over $100, under Laws of 1869, as to pecan timber, clause 1, fine not less than $50 nor over $100, one-third to prosecuting witness, one-third to owner and one-third to county school fund; under Laws of 1869, as to burying ground, same penalty as section 3 of chap. 22, R. S. 1845; under Laws of 1869, as to fair grounds, fine not less than $50.

NOTE. — Sections 137, 139, 140, and section 2, Laws of 1851, above, may be of justice of peace cognizance under Laws of 1863, p. 54, § 1; also as to Laws of 1869 above mentioned.

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1. *Indictment for uttering unauthorized bill of credit.*

(R. S. 1845, ch. 30, § 136; Purp. 386; Scates, 397.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, * unlawfully, knowingly, and fraudulently then and there did without special leave of the general assembly of the State aforesaid, to wit, the State of Illinois, thereto had, utter and put off on one J. N., a certain bill of credit fraudulently intending, that same be used as a general circulating medium in the place of money, which said fraudulent bill of credit is of the tenor following, to wit (*here set out name verbatim*); against, etc., and contrary, etc.

2. *Indictment for defacing public notice, etc.*

(R. S. 1845, ch. 30, § 137; Purp. 386; Scates, 397.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain notice, part printed and part written (*or written notice*), of sale of real estate, under and pursuant to an order and decree of the Circuit Court, in and for the county of C. aforesaid, publicly set up and posted on the post-office at C. aforesaid, did intentionally, unlawfully and injuriously tear down, deface and destroy, before the expiration of the time for which, by law, said notice was to remain posted up; against, etc., and contrary, etc. (See Arch. 201.)

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3. *Indictment for having tools to break into a dwelling-house.*

(R. S. 1845, ch. 30, § 139; Purp. 387; Scates, 398.)

(*Use No.* 1 *to* *, *and proceed thus:*)

feloniously, knowingly and unlawfully did have on his person certain instruments and tools, that is to say, ten skeleton keys, adapted and designed for forcing and breaking open the dwelling-house of one J. N. there situate, with intent then and there the dwelling-house of the said J. S. there situate, feloniously and burglariously to break and enter, and then and there the goods and chattels of the said J. N. in the said dwelling-house then and there being, feloniously and burglariously to steal, take and carry away; the said J. N. then and there well knowing the said instruments to be adapted and designed for the purpose aforesaid, with intent then and there feloniously and burglariously to use and employ the said instruments for the purpose aforesaid; against, etc., and, etc. (See *Reg.* v. *Oldham*, 2 Den. C. C. 472, and Train & Heard, 83.)

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4. *Another form for same.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

on the night of the day aforesaid, in the year aforesaid, near the store occupied by J. N., containing valuable property, situate at C. aforesaid, in the county aforesaid, was found, having upon him, and in his possession, a pick-lock, crow and bit, with intent then and there feloniously to break open and enter the said store; against, etc., and, etc.

5. *Indictment for having concealed weapons with intent to assault.*

(R. S. 1845, ch. 30, § 139, clause 2, id.)

(*Use No.* 1 *to* *, *and proceed thus:*)

had on his person and in his possession a certain offensive weapon, to wit, a pistol, with intent unlawfully, willfully and maliciously one J. N. to assault; against, etc., and, etc.

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6. *Indictment for refusing to join the posse comitatis.*

(R. S. 1845, ch. 30, § 140; Purp. 387; Scates, 398.)

(*Use No.* 1 *to* *, *and proceed thus:*)

he the said J. S. being then over the age of eighteen years, and by his allegiance bound to aid the power of the county aforesaid, then and there by one J. T. then and there being a constable of C. aforesaid, in the county aforesaid, and lawfully empowered to call to his assistance the power of the county aforesaid to aid him in making legal arrests, was lawfully commanded and required by said J. T., constable as aforesaid, to aid and assist him in arresting one J. N., for whose arrest said J. T., so being such constable as aforesaid, then and there had a legal warrant, he the said J. T., being then and there resisted in attempting the arrest aforesaid, the said J. S. did then and there unlawfully, willfully and contemptuously refuse to aid said J. T. in said arrest by joining the said power of said county, whereby the said J. N. was enabled to escape and go at large, whithersoever he would, in contempt of the people and the law, to the hindrance of justice, to the evil example of all others in the like case offending; against, etc., and contrary, etc.

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7. *Indictment for desecrating a grave.*

(R. S. 1845, ch. 30, § 141; Purp. 387; Scates, 398.)

(*Use No.* 1 *to* *, *and go on thus:*)

the church-yard of, and belonging to C. aforesaid, there situate, unlawfully and willfully did break into and enter, and the grave in which one J. N., deceased, had lately then before been interred, and then was, then and there unlawfully, willfully, and inde-

cently did dig open, and then and there the body of the said J. N. out of the grave aforesaid, unlawfully, willfully, and indecently did take and carry away, with intent to use and dispose of the said body for the purpose of dissection, the said J. S. not being then and there authorized so to do, with the knowledge and consent of the near relations of the said J. N., deceased; against, etc., and contrary, etc. (Arch. 666; Train & Heard, 464.)

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8. *Indictment for willful trespass on burying ground.*

(Laws 1851, p. 111, § 2.)

(*Use No.* 1 *to* *, *and go on thus:*)

with force and arms, one willow tree, of the value of ten dollars, of the property of one J. N., then and there placed within the limits of a certain cemetery there situate, unlawfully, willfully, and maliciously did cut down and destroy; against, etc. (Train & Heard, 377.)

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9. *Indictment for injuring pecan timber.*

(Law of 1869, p. 27, § 1, clause 1.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord——, at C. aforesaid, in the county aforesaid, * unlawfully, knowingly and willfully did cut down, fell and destroy a pecan tree then growing on the land of J. N. there situate, he, the said J. S., then and there, not having the license or consent of said J. N. thereto, and he, the said J. S., not then and there having any color of title to said land made in good faith; against, etc., and contrary, etc.

NOTE. — This extends to pecan timber growing on the land of any corporation, and extends to cutting, boxing, felling, boring or destroying any pecan tree or sapling standing or growing upon the land of, etc. Clause two of same section provides, in addition to the above, that any person so felling or destroying such tree or sapling shall be subject to indictment and fine not over $100, or by imprisonment in county jail not over three months, or both.

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10. *Indictment for desecrating a dedicated place of interment.* (Id., § 1.)

(*Use No.* 8 *to asterisk* [*], *and go on thus:*)

a certain piece of ground there situate, theretofore used as a burying ground by the people of the neighborhood of C. afore-

said, for a long space of time, to wit, for a period of twenty years and upward, such use thereof not having been prevented by the owner or owners of the piece of ground aforesaid during said period, did then and there unlawfully, knowingly and willfully attempt to use such piece of ground theretofore so used as aforesaid for a purpose other than that of interment of the dead, to wit, for a garden for the growing of vegetables; against, etc., and contrary, etc.

Note. — This act amends section 2 of chapter 22, R. S. 1845, of "charitable uses." The desecration or use is a trespass; section two of this amendatory act makes it the duty of the corporate authorities and police commissioners of any incorporated town or city in the State, within whose limits such burying ground is situated, to prevent such desecration or other use than that of interment by the owner of the fee or any other person. Section one declaring the use for interment for twenty years, without prevention of the owner, to be a dedication for a burying ground.

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11. *Indictment for trespassing on county fair grounds.* (Id. § 1.)

(*Use No.* 8 *to* *, *and go on thus:*)

unlawfully, knowingly and willfully did, on the fair grounds of the county of C., there situate, trespass, by then and there cutting and destroying timber trees growing on said fair grounds, the property then and there being of the agricultural society of the county of C. aforesaid; against, etc., and contrary, etc.

Note. — This act extends, also, to "removing, taking, carrying away or breaking any boxes, troughs, stalls, benches, fences, locks, doors, inclosures, gate or gates, or any appurtenances pertaining to said fair grounds, whether inside or outside of their inclosures.

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## VII. ELECTIONS.

This head embraces sections 142 and 143 of the Crimimal Code; also Law of 1861, p. 268, § 4; also Law of 1865, p. 58, § 14; also Law of 1869, p. 199, § 1.

*Decisions* — none, except under Law of 1861, p. 268; *Carlo* v. *People*, 12 Ill. 285.

*Limitation*, under section 142 above, and section 143 — eighteen months; under Law of 1861, p. 268 above, and Law of 1865, p. 58 above — three years. *Penalty* — under section 142, fine not over $100, this is repealed by Law of 1861 above. Penitentiary not less than one year nor over five years; under Law of 1861 above, same term in the penitentiary; under Law

of 1865 above, penitentiary not less than one year; under this law, perjury is punished as such; fraud in the election board, same time in penitentiary. The Law of 1869, page 199, applies to breaches of it, all the penalties in sections 142 and 143 of the Criminal Code; also those of the Law of 1861, section 4, above, and those of section 14 of the Registry Law of 1865 above.

NOTE.— Section 142 of the Criminal Code, may be of justice of peace cognizance. See Law of 1863, p. 54, § 1.

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1. *Indictment for voting more than once at an election.*

(R. S. 1845, ch. 30, § 142; Purp. 387; Scates, 399.)

That J. S., late of C., in the county of C., at a general election, held on the first Tuesday after the first Monday in November last past, it being the — day of November, in the year of our Lord ——, in and for the county of C. aforesaid, in the several precincts (*or townships*) of the said county, for the purpose of electing county officers,* the said J. S. being an elector in said county, did appear at the place of holding said election in the *precinct* (*or township*) aforesaid, and did then and there vote for, and give in his vote for E. F. as the person whom he intended to vote for to fill the office of sheriff of said county, to be filled at said election, and cause his name and vote to be entered by the clerks of said election in said precinct (or township) for the said E. F. for sheriff as aforesaid; and the said J. S. being a person regardless of the rights of the people, and of the freedom and purity of elections in this State, afterward, on the said first Tuesday of November last past, being the day in the month and year aforesaid, did appear at the place of holding said election in said precinct (*or township*) in said county, and did then and there again vote for the said E. F. as the person he intended to vote for to fill the office of sheriff, to be filled at said election, for the said E. F. for the office of sheriff as aforesaid; against, etc.

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2. *Indictment for voting at an election, not being a qualified voter.*

(Laws of 1867, p. 268, § 4.)

(*Use No.* 1 *to* *, *and go on thus:*)

the said J. S. not being a qualified voter at the precinct aforesaid, did appear at the place of holding said election in the

said precinct (*or township*), and did then and there vote for, and give in his vote for E. F. as the person whom he intended to vote for to fill the office of sheriff of said county, to be filled at said election, and cause his name and vote to be entered by the clerks of said election in said precinct (*or township*) for the said E. F. for sheriff as aforesaid; against, etc., and contrary, etc.

Note.—The statute of 1861, page 268, section 4, makes it indictable to vote twice as in section 142 of the Criminal Code, increases the penalty to penitentiary for not less than one nor more than five years. It also makes the *offer to vote* a second time at same election an indictable offense with same penalty.

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3. *Indictment for causing name to be registered not being a qualified voter.*

(Laws of 1865, p. 58, § 14.)

That J. S., late of C., in the county of C., on the —— day of ——, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, feloniously, knowingly and unlawfully did appear before the board of registry of electors in the precinct (*or township*) of C. aforesaid, the said board then and there sitting as a board of electors, to register the voters of said precinct (*or township*) according to law, and cause his name to be registered as a legally qualified elector, he, the said J. S., then and there well knowing that he, the said J. S., was not then and there a legally qualified elector entitled to be registered as aforesaid; against, etc., and contrary, etc.

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4. *Indictment for menacing an elector.*

(R. S. 1845, ch. 30, § 143; Purp. 387; Scates, 399.)

(*Use No.* 1 *to* *, *and go on thus:*)

did unlawfully by threats and menaces attempt to influence one J. N., being then and there a legal voter entitled to vote at said election, to vote at said election as he, the said J. S., required, the said J. N. then and there being in the employment of the said J. S., he, the said J. N., then and there did unlawfully and menacingly threaten to discharge said J. N. from his said employment, unless he, the said J. N., would give his vote at said election as he, the said J. S., desired and required, in contempt of the people, etc., and the law, to the evil example of all others in the like case offending; against, etc., and contrary, etc.

5. *Indictment for voting more than once at an election for subscribing to stock of a corporation.*

(Law of 1869, p. 199, § 1.)

That J. S., late of C., in the county of C., at a special election, held on, etc., in C., aforesaid,* upon the question whether the town of C. aforesaid, should subscribe for, or to, any stock in the (name the company), being an incorporated company under the laws of this State, (*use No.* 1 *of this head from* * *to end, making the necessary alterations*); against, etc., contrary, etc.

NOTE.—This act applies to all elections to be held in any county, city, town, township or village under any general or special law of the State, on the question whether such county, etc., or any officer or officers thereof, or any one in their uame or on behalf of such county, etc., or the inhabitants of them "should subscribe for or to any stock in any incorporated company, or make any donation or gift in aid of such company"—or on the question of the "removal of any county seat."

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6. *Indictment for voting more than once at an election for removal of a county seat.* (Id.)

(*Use No.* 5 *to* *, *and go on thus:*)

upon the question of the removal of the county seat of the county of C., aforesaid, from —— to——, (*use No.* 1 *from* *, *to end, making the necessary alterations;*) against, etc., and contrary, etc.

NOTE.—Under this law an indictment will lie as in Nos. 2, 3 aud 4 of this head, and to frauds in the election board. These precedents can be readily altered to meet this act on the elections for the questions stated.

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## VIII. SUNDAY.

This subject embraces sections 144 to section 150, inclusive, and, being of the cognizance of justices of the peace, no indictment is here given, except under section 147, for disturbing public worship.

*Decisions.*—Under section 144, *Baxter* v. *People*, 3 Gilm. 368 and cases cited, *Johnson* v. *People*, 31 Ill. 469.

*Limitation*—eighteen months. *Penalty*—under section 147, fine not over fifty dollars.

1. *Indictment for disturbing public worship.*

(R. S. 1845, ch. 30, § 147; Purp. 388; Scates, 399.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, with force and arms, at C. aforesaid, in the county aforesaid, did willfully interrupt and disturb a certain collection of citizens then and there assembled together for the purpose of worshipping Almighty God, within the place of said meeting, to wit, within the Methodist Episcopal church (*or any church*) in C. aforesaid, in the county aforesaid, by then and there using profane swearing; against, etc.

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## IX. GAME.

The numerous State Laws on this subject are the subject of justice of the peace jurisdiction. No precedents of indictments are therefore given herein.

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### SECTION 10. OFFENSES COMMITTED BY CHEATS, SWINDLERS, AND OTHER FRAUDULENT PERSONS.

These offenses are the subject of division 12 of the Criminal Code, with subsequent enactments. They are:

1. Fraudulent conveyances, § 151.
2. False representations, § 152, amended by Law of 1857, p. 103, § 2.
3. False pretenses, § 153, amended by said Law of 1857, and Law of 1867, p. 159, § 1.
4. Confidence game, Law of 1867, p. 88, §§ 1, 2.
5. Fraudulently selling land twice, § 154.
6. Using false weights, etc., § 155.
7. Frauds by warehousemen, Law of 1851, p. 9, §§ 1, 2, 3, 4, 5.
8. Fraudulent mixing grain, Law of 1867, p. 179, § 8.
9. Contracts for future delivery of grain, id. §§ 17, 18, 19, 20.
10. Over charging railroad fare for passengers; also for over charging freight, Law of 1869, railroad rates, p. 7, § 7.
11. Commission merchant fraudulently converting proceeds of goods to his own use, id. p. 10, § 1.
12. Sales of patent rights, id. p. 13, § 5.

13. Assuming corporate name without authority, Law of 1869, p. 15, §§ 1, 2, 3.

14. Frauds on insurance companies, Law of 1869, p. 25, § 1.

15. Frauds on gas consumers and gas light companies, Law of 1869, p. 200.

16. Frauds as to mineral oils, Law of 1869, p. 200.

17. Frauds under the Homestead corporation law, Law of 1869, p. 77, § 8.

*Decisions.* — Under section 151, *Stow* v. *People*, 25 Ill. 82; under section 153, *Cowen* v. *People*, 14 id. 349; *Taylor* v. *Cottrell*, 16 id. 94; *Johnson* v. *People*, 22 id. 314; *Thomson* v. *People*, 24 id. 60.

*Limitation.* — Eighteen months in all, except confidence game No. 4 above, and Nos. 6 and 7 above, in which three years.

*Penalty — under No.* 1 *above*, fine not over $1,000; *under No.* 3, fine not over $2,000, and county jail not over one year, and return of property so obtained; under No. 4, penitentiary not less than one year, nor over ten years; under No. 5 same as No 4; under No. 6, fine not less than $200, and county jail three months; under No. 7, fine not over $1,000, and penitentiary not over five years; under No. 8, fine not less than $1,000, nor over $5,000; under No. 9, same as No. 8; under No. 10 above, fine not less than $100 nor over $1,000, or county jail not less than thirty days nor over one year, or both, in discretion of the court; under No. 11 above, fine not over $500, or county jail not over three months, or both, in discretion of the court, and civil action for damages in double—also for retaining more than $100, fine not over $500 and county jail not over one year, or both, in discretion of the court; under No. 12 above, fine not over $500, or county jail not over six months, or both, in the discretion of the court, and civil action for double damages; under No. 13 above, fine not less than $100, and like sum, in discretion of the court, for each day of continuing the offense; under No. 14 above, if over $25 obtained, penitentiary not over fifteen years at hard labor—if under $25, fine not over $500 or county jail not over six months, or both, in discretion of the court; under No. 15 above, fine not over $250 or county jail not over three months, or both; under No. 16 above, under section 2, fine not over $100, and county jail not over one month,

in the discretion of the court—under sections 3 and 4, same penalties as in section 2; under No. 17 above, by fine or imprisonment, or both, to extent of misdemeanors punishable in the discretion of the court.

The first clause of section 151 of the Criminal Code, is similar to the provision in Rev. Stat. 1845, p. 258; Purp. 585, and to the statute of 13 Elizabeth, ch. 5, § 3, of fraudulent conveyances; under that statute of 13 Elizabeth, the only precedent in the books is *Reg.* v. *Smith et al.*, 6 Cox C. C. 31; for this scarce precedent, see appendix No. 3.

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### No. 1. Fraudulent conveyance.

1. *Indictment for fraudulent conveyance.*

(R. S. 1845, ch. 30, § 151; Purp. 393; Scates, 400.)

That C. D., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, being the owner in fee of a certain tract of land, situate, lying and being in the said county, bounded and described as follows, to wit (*here describe the land*), being then and there indebted to one A. B., in a large sum of money, to wit, the sum of one thousand dollars, for the collection of which the said A. B. then lately commenced a suit in the Circuit Court of said county of C. against the said C. D., he, the said C. D., did unlawfully and fraudulently convey the land aforesaid to one G. H., with intent to hinder, delay and defeat the said A. B., in the collection of his said debt; against, etc., and contrary, etc.

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### No. 2. False representations.

1. *Indictment for false representations.*

(R. S. 1845, ch. 30, § 152; Scates, 400, and Laws 1867, p. 103.)

(*The false representation was that he was a solvent trader.*)

That A. B., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully, knowingly, and designedly did in writing signed by him, falsely represent and pretend to C. D.,* that he, the said A. B., was a member of a certain firm carrying on busi-

ness at C. aforesaid, under the name, style and firm of E. P. and company, and that said last mentioned firm of E. P. and company, was then and there in solvent circumstances, and had then, to wit, on the day, in the year aforesaid, at C. aforesaid, in the county aforesaid, a balance in its favor of ten thousand dollars; by means of which said false representations and pretenses the said A. B., did then and there unlawfully, knowingly, and designedly obtain from the said C. D. (*here state the goods obtained, and the value by items, as "one hundred china plates of the value of one dollar each*)," of the property of the said C. D., with intent then and there to cheat and defraud the said C. D. of the same, whereas, in truth and in fact, the firm of E. P. and company, was not then and there in solvent circumstances; and whereas, in truth and in fact, the said firm of E. P. and company had not at the time the said A. B. so falsely represented and pretended as aforesaid, a balance in their favor of ten thousand dollars, as the said A. B. then and there well knew; against, etc.

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### No. 3. FALSE PRETENSES.

1. *Indictment for false pretenses.*

(R. S. 1845, ch. 30, § 153; Scates, 400, and Laws 1857, p. 103.)

(*The false pretense is in giving a check on a bank, where the defendant had no funds.*)

(*Use No. 2 to *, and go on thus:*)

that a certain paper writing produced by the said A. B. to the said C. D., and purporting to be a check drawn by the said A. B. upon E. F. and company, bankers, for the payment to bearer of the sum of one thousand dollars, was then and there a good, genuine, and available order for the payment of the sum of one thousand dollars, and was then and there of the value of one thousand dollars, which said check is of the tenor following, that is to say (*here set it out*), and that the said A. B. kept an account with the said E. F. and company, and that the said A. B. had money in the hands of the said E. F. and company for the payment of the said check, and that the said A. B. had full power, right, and authority to draw checks upon the said E. F. and company, by means of which said

false pretenses the said A. B. did then and there unlawfully, knowingly and designedly obtain from the said C. D. (*here describe the goods and their value*), of the goods and chattels of the said C. D., with intent then and there to defraud the said C. D. of the same, the same not being a sale of said property on a credit. Whereas, in truth and in fact, the said paper writing was not, then and there, a good, genuine and available order for the payment of the sum of one thousand dollars, nor was the same then and there of the value of one thousand dollars; and, whereas, in truth and in fact, the said A. B. did not keep any account with the said E. F. and company; and, whereas, in fact and in truth, the said A. B. had not any money in the hands of the said E. F. and company for the payment of said check; and, whereas, in truth and in fact, the said A. B. had not any power, right, or authority to draw checks upon the said E. F. and company, as the said A. B. then and there well knew; against, etc.

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No. 4. Confidence game.

1. *Indictment for confidence game.*

(Laws of 1867, p. 88, §§ 1, 2.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did unlawfully and feloniously obtain (*or attempt to obtain*) from J. N. his money (*or property*) by means of the confidence game; against, etc.

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No. 5. Fraud in selling land twice.

1. *Indictment for fraudulently selling land twice.*

(R. S. 1845, ch. 30, § 154; Purp. 393; Scates, 401.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county of C. aforesaid, did enter into an agreement, in writing, with J. N., to sell and convey to the said J. N., for the consideration of one thousand dollars, to be paid three months after the date of said agreement, all that certain piece or parcel of land, situate in said county, and bounded as follows, to wit (*here describe the*

*lands*), and that afterward, to wit, on the said first day of August, in the year aforesaid, and while the said agreement was in full force, in the county aforesaid, for the consideration of one thousand dollars, he, the said C. D., did knowingly and fraudulently dispose of and convey the same land to A. B.; against, etc., etc.

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### No. 6. False weights.

1. *Indictment for selling by false weights.*

(R. S. 1845, ch. 30, § 155.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, and from thence to the finding of this indictment, was a grocer, engaged in buying and selling divers goods, wares and merchandise, and did unlawfully, deceitfully and fraudulently keep in his store false weights for weighing goods, wares and merchandise, by him sold, which caused them to appear of greater weight, to wit, of the greater weight by one ounce in every pound of goods weighed, than the real and true weight thereof, and during that time did then and there knowingly sell to divers citizens of this State, divers wares, goods and merchandise, weighed with said false weights; against, etc.

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### No. 7. Frauds by warehousemen.

1. *Indictment for issuing false receipts.*

(Laws of 1851, p. 9, § 1; Purp. 394; Scates, 420.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, then and there being a warehouseman, feloniously, unlawfully, knowingly and fraudulently † did issue a certain false and fraudulent receipt * for one hundred bushels of grain to one J. N., with intent to enable the said J. N. to gain a credit thereon, which false and fraudulent receipt purported that said J. N. was owner of said one hundred bushels of grain, he, the said J. S., then and there well knowing that said one hundred bushels of grain had not been received into his, the said J. N.'s warehouse, at C. aforesaid, as property of said J. N., or on his, the said J. N.'s account, and that he, the

said J. S., had not then and there under his control the grain aforesaid, whereby, and by force of the statute in such case made and provided, the said J. S. on the day and year aforesaid, was, and still is, deemed a cheat; against, etc.

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2. *Indictment for issuing receipt for property not his own.*

(Laws 1851, p. 9, § 2, id.)

(*Use No.* 1 *to* *, *and go on thus:*)

to one J. N. for one thousand bushels of grain, as the property of him, the said J. S., then in his, the said J. S., warehouse at C. aforesaid, in the county aforesaid, being, which said receipt was by said J. S. given to said J. N. as a security for the payment of a debt of five hundred dollars then owing by said J. S. to said J. N., he, the said J. S., well knowing that at the time of the issuing of said receipt, the said one thousand bushels of grain then in the said warehouse of said J. S. did not belong to him, the said J. S., with intent to defraud the said J. N. whereby, and by force of the statute in such case made and provided, the said J. S., on the day and year aforesaid, was, and still is, a cheat; against, etc.

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3. *Indictment for issuing a second receipt, the first receipt being uncanceled.* (Id. § 3, id.)

(*Use No.* 1 *to* *, *and go on thus:*)

to one J. N. for one thousand bushels of grain, then and there in his, the said J. S. warehouse at C. aforesaid, in the county aforesaid, being, in order to enable the said J. N. to gain a credit thereon, the said J. S. then well knowing that another prior receipt for same one thousand bushels of grain issued by said J. S. to one A. B., was then outstanding and uncanceled; whereby, etc. (*conclude as in No.* 2 *above*).

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4. *Indictment for transferring stock in warehouse without the owner's consent.* (Id. § 4, id.)

(*Use No.* 1 *to dagger* [†], *and go on thus:*)

did transfer and deliver to J. N. one thousand bushels of grain by issuing to said J. N. a receipt therefor, he, the said J. S.,

then and there well knowing that a prior receipt had before that time been given by him, the said J. S., to one J. W. for said one thousand bushels of grain, then in the warehouse of said J. S. at C. aforesaid, in the county aforesaid, the said J. W. being owner of said one thousand bushels of grain, and he, the said J. W., not having in writing assented to said transfer to said J. N. of the grain aforesaid; whereby, etc.

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No. 8. FRAUDULENTLY MIXING GRAIN.

1. *Indictment for fraudulently mixing grain.*

(Laws of 1867, p. 179, § 8; Gross, 80.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, being a public warehouseman feloniously, fraudulently, deceitfully and unlawfully did mix the different grades of grain in his said warehouse, for the purpose of raising the grade thereof, he, the said J. S., not having for that purpose been applied to by J. N. the owner of said grain; against, etc.

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No. 9. CONTRACTS FOR FUTURE DELIVERY OF GRAIN.

1. *Indictment for gambling contract for future delivery of grain.*

(Laws of 1867, p. 179, § 18; Gross, 80.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, being a warehouseman dealing in storing of grain,* unlawfully, knowingly and wickedly did make a gambling contract with J. N. for the delivery at a future time to him, J. N., of one thousand bushels of grain, he, the said J. S., not then and there being the owner of said grain, nor agent of the owner thereof, and the said grain not being then and there in actual possession of said J. S., whereby and by force of the statute in such case made and provided, the said J. S. and J. N. are deemed guilty of gambling; against, etc.

2. *Indictment for loaning warehouse receipts for speculation.* (Id. § 19.)

(*Use No.* 1 *above to* *, *and go on thus:*)

unlawfully, knowingly and wickedly did loan to J. N. a warehouse receipt for five thousand bushels of grain, for the purpose of said J. N. speculating thereon, he, the said J. N., not then being owner of said grain, and he, the said J. S. well knowing that said receipts were so loaned for the purpose of speculation theron by said J. N.; against, etc.

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No. 10. Overcharging railroad fare and freight.

1. *Indictment for overcharging railroad passenger fare.*

(Law of 1869, p. 7, § 7, clause 1.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, being agent (officer, agent or employee), at C. aforesaid, of the railroad company (name it by its corporate name) employed by said railroad company to receive fare for carriage and transportation of * passengers upon the railroad of said railroad company, then and there unlawfully, knowingly, willfully and fraudulently did demand, receive and take from J. N., a passenger on said railroad, a greater (or "different") fare than prescribed by the statute in such case made and provided for such transportation from C. aforesaid to D., a station on said railroad, to which said J. N. was to be carried as aforesaid; against, etc., and contrary, etc.

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2. *Indictment for overcharging railroad freight for carrying property.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

property upon the railroad of said railroad company, then and there unlawfully, knowingly, willfully and fraudulently did demand and receive from J. N. a greater (or "different") rate of compensation for the carriage and transportation of property of J. N. upon said railroad from C. aforesaid to D., a station on said railroad, to which said property was to be carried as aforesaid, than prescribed by the statute in such case made and provided; against, etc., and contrary, etc.

No. 11. COMMISSION MERCHANT FRAUDULENTLY CONVERTING PROCEEDS OF CONSIGNMENT TO HIS OWN USE.

1. *Indictment for fraudulent conversion of consignments, when not over* $100 *in amount.*

(Law of 1869, p. 10, § 1.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, a commission merchant (or "*warehouseman, storage, forwarding or commission merchant, or his or their agents, clerks or employees*") then and there being, fraudulently, knowingly and designedly did convert to his own use the proceeds (or "profits") of the sale of one hundred barrels of apples ("*fruits, grain, flour, beef, pork, or any other goods, wares or merchandise*") the property of J. N., consigned to said J. S. as commission merchant aforesaid for sale, for the use of said J. N., contrary to the instructions of said J. N., consignor as aforesaid, the said J. N. having demanded of said J. S. delivery to him of the proceeds (or *profits*) aforesaid, after the said J. S. deducting from said proceeds (or *profits*) the usual percentage on sales as commissions, and which proceeds (or *profits*), after such deduction, amounts to a large sum, to wit, the sum of ninety dollars (*not exceeding one hundred dollars*), and which the said J. S. failed to deliver to said J. N., though so demanded as aforesaid; but said proceeds did embezzle, steal, take and carry away, at C. aforesaid, in, etc., against, etc., and contrary, etc.

NOTE. — When the proceeds or profits so retained or embezzled is over $100, the fine, on conviction, is not over $500, or imprisonment in county jail not over one year, or both, in the discretion of the court, and liability to civil action for double damages. Warehousemen, etc., enumerated in the preceding form, are liable to indictment; a form to reach them can easily be framed from the foregoing.

No. 12. FRAUD IN SALE OF PATENT RIGHTS.

1. *Indictment for selling patent rights, without complying with the requirements of the statute.*

(Law 1869, p. 13, § 5.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, and in the State of Illinois, unlawfully, knowingly, willfully and fraudulently did offer to sell to one J. N. a certain patent right claimed by said J. S. to belong to him, he, the said

J. S., not having previously thereto submitted to the clerk of the county court of the county of C. aforesaid, as required by the statute in such case made and provided; against, etc., and contrary, etc.

Note. — The above section five makes it a misdemeanor to *sell or barter* within the State, or to take any obligation or promise in writing for a patent right, without complying with the requirements of the act or refusing to exhibit the certificate by said act required. *Penalty*, fine not over $500, or county jail not over six months, or both, in the discretion of the court; also liability to civil action for the damages sustained. The crime is complete by non-compliance with the statute, or refusing to exhibit the certificate required by the act; an indictment to suit either can be readily drawn from the above.

The statute requires, in section two, that the party claiming the patent right, before he can *barter or sell*, or *offer to barter or sell*, same (each act is indictable, bartering or selling, or offering to barter or sell), *first*, shall submit to the county clerk, for his examination, the letters patent, or a duly authenticated copy thereof, and also his authority to sell or barter such patent right; *second*, shall, at the same time, swear or affirm to an affidavit before such clerk, which affidavit shall state the name and residence of the applicant, and, if an agent, the name and residence of his or her principal, the affidavit to be filed in said county clerk's office. If the clerk be satisfied that said patent right has not expired, is not revoked or annulled, and the party is duty empowered to sell same, the clerk shall record the affidavit in a proper book, and give a certificate of that fact under the seal of the county court to such applicant. Section three makes it imperative that the party offering to sell, etc., exhibit such certificate; under section five, refusing to exhibit such certificate on sale or barter completes the offense, and an indictment lies for same.

The object of the act is declared in its title to be regulation in Illinois of sale of patent rights, and to prevent frauds therein.

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## No. 13. Assuming corporate name.

1. *Indictment for assuming corporate name without charter.*

(Law 1869, p. 15, § 1.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully, fraudulently and designedly did put forth a sign over the door of his office at C. aforesaid situate, assuming therein the corporate name of (here insert name), for the purpose and with the intent of soliciting business under such corporate name, he, the said J. S., having no authority, under any public law or charter of the State of Illinois, to assume said corporate name; against, etc., and contrary, etc.

Note. — Section one makes it unlawful for any association of persons to put forth such sign or advertisement without charter.

2. *Indictment for assuming a corporate name other than that in the charter.* (Id. § 2.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully, fraudulently and designedly did put forth a sign over the door of his office in C. aforesaid situate, which sign did contain the name of said J. S., as doing business in the corporate name of (here insert the name), whereas, in fact and in truth, the corporate name of said J. S., under the laws of the State of Illinois, is as follows, to wit (here insert it), which said last mentioned corporate name is other and different from the corporate name in said sign contained; against, etc., and contrary, etc.

NOTE. — Section two makes it unlawful for any person or persons, or association, company or corporation to use other than their corporate name, as well as add any thing to or lengthen such corporate name.

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## No. 14. FRAUDS ON INSURANCE COMPANIES.

1. *Indictment for obtaining money on life policy of insurance by false representation of the death of the insured person.*

(Law 1869, p. 25, § 1.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county of C. aforesaid, did unlawfully, fraudulently and falsely obtain from the (name the insurance company), life insurance company at C. aforesaid situate, incorporated as such life insurance company under the laws of the State of Illinois, the sum of one hundred dollars, by falsely and fraudulently representing to said insurance company, on false and fraudulent written representations (*or affidavits*), that one J. N., whose life was insured by said insurance company, was dead, when, in fact and in truth, the said J. N. was not then dead, as the said J. S. then and there well knew; against, etc., and contrary, etc.

NOTE. — This act makes it unlawful to obtain, or attempt to obtain, money from any life or accident insurance company by falsely stating the death of a person insured, or for obtaining, or attempting to obtain an insurance on the life of a fictitious person. Obtaining twenty-five dollars or more is punishable in penitentiary at hard labor for a term not over fifteen years; if under twenty-five dollars, a fine not over $500, or county jail not over six months, or both, at discretion of the court.

No. 15. Frauds on gas consumers and gas companies.

1. *Indictment for causing a gas-pipe to supply gas without connecting same with the meter.*

(Laws of 1869, p. 200, § 1.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, did unlawfully, knowingly, designedly and fraudulently, with intent to defraud the (name of the gas company), at C. aforesaid situate, and deprive them of payment for gas by them to said J. S. there supplied,* connect a certain pipe for conducting illuminating gas by said company supplied, from a gas reservoir of said company, in the house of said J. S., at C. aforesaid situate, to a gas burner there also situate, by which said burner the illuminating gas aforesaid was consumed, without the said J. S. passing the pipe aforesaid through the meter then and there provided by the gas company aforesaid, for measuring and registering the gas there consumed; against, etc., contrary, etc.

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2. *Indictment for injuring gas meter to defraud, etc.* (Id. § 2.)

(*Use No.* 1 *to* *, *and go on thus:*)

did injure the gas meter provided by the company aforesaid for measuring and registering the quantity of gas by said J. S. there consumed, and to him supplied as aforesaid, so as to prevent the action of said meter in measuring and registering the quantity of gas so consumed as aforesaid; against, etc., contrary, etc.

Note.— Section 2 makes it unlawful to prevent connection of any gas-pipe conducting gas with the meter, or to injure the action of the meter, or procure its injury, etc.

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No. 16. Frauds as to mineral oils.

1. *Indictment for selling mineral oils not "approved," etc.*

(Laws of 1869, p. 200, § 3.)

That J. S., late of C., in the county of C., on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, then and there being a dealer (*manufacturer*,

*refiner, producer or dealer*) in mineral oils, did unlawfully, knowingly and designedly neglect to notify J. N., a duly authorized inspector of mineral oils by the laws of the State of Illinois, of his having purchased a large quantity of mineral oils, then in his possession at C. aforesaid, for the space of two days, the said mineral oil so purchased not having been approved (*nor inspected*) by said inspector pursuant to the statutes in such case made and provided; against, etc., contrary, etc.

NOTE.— This act, § 2, makes any fraud, deceit, culpable negligence of the inspector in his duties subject to indictment, fine not over $100, and county jail not over one month, or both, in the discretion of the court; § 3 inflicts same penalty for the offense in above indictment against the parties mentioned therein.

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No. 17. FRAUD UNDER THE HOMESTEAD CORPORATION LAW.

1. *Indictment of trustee for canceling mortgage without authority.* (Laws of 1869, p. 77, § 8.)

That J. S., late of C., in the county of C. aforesaid, on the first day of June, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, was a trustee of the Homestead Association of C. aforesaid (*naming it by its corporate name*), a company incorporated under the laws of the State of Illinois, doing business at C. aforesaid, and was as such trustee then and there intrusted with the mortgages, bonds and other securities of said Homestead Association (or other name) for safe keeping, subject to the directions of said incorporation, the said J. S., then and there being trustee as aforesaid, did unlawfully, knowingly and designedly, contrary to and without the authority of said (*corporation, naming it*), and in violation of good faith, for his own use cancel a certain mortgage of one J. N. to the said (corporation), given to secure (describe the mortgage generally), and the said mortgage so canceled did deliver to said J. N.; against, etc., contrary, etc. (See Arch. 286.)

NOTE.— This act, § 8, makes it a misdemeanor of any officer, trustee, attorney, agent or servant of such corporations to cancel, etc., securities without authority; any fraud in performance of duties is also so held and punished.

Section 11. Fraudulent and Malicious Mischief.

The offenses in this section embrace sections 156–158, of the Criminal Code, and form division 13 of that Code, and Laws of 1867, p. 158, section 1, amending section 156, of the Criminal Code; also Laws of 1865, p. 105, section 1, as to malicious mischief to cemeteries; also Laws 1867, p. 88, canals, etc.; also Law of 1869, p. 44, cruelty to animals, sections 1, 2, 3, 4, sections 9, 11 and 12.

*Decisions.* — Under section 156, see *Snap* v. *People*, 19 Ill. 80, and under section 158, see *Benton* v. *McClellan*, 2 Scam. 434.

*Limitation.* — Eighteen months, except Laws 1867, pp. 88 and 158, which is three years. *Penalty.* — Under section 156, fine, not over $100, or county jail not over three months, or both; under Laws of 1867, p. 158, section 1, penitentiary not less than one year, nor more than ten years; under section 157, fine, not over $5,000, nor less than the value of the jail injured; under section 158, not less than $5, nor more than $100. This offense may be of justice of the peace cognizance (see Laws 1863, p. 54); under Laws 1865, p. 105, section 1, same as in section 157; under Laws of 1867, p. 80, as to canals, penitentiary not less than one year, nor more than ten years; under Law of 1869, cruelty to animals, section one, fine for each offense not less than $50, nor over $100; section 2 same as section 1, so of sections 3, 4, 9, 11 and 12; these offenses may be of justice of the peace cognizance, under section 1.

Note. — Under section 156 there are ten several classes of property mentioned, and they do not exhaust the modes of committing this misdemeanor at common law.

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(*a*) Malicious mischief.

1. *Indictment for injuring a bridge.*

(R. S. 1845, ch. 30, § 156; Purp. 395; Scates, 402.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, unlawfully willfully and maliciously * did break down and damage a certain bridge there situate, with intent thereby then and there to render the said bridge dangerous and impassable; and that the said J. S. did thereby then

and there render the said bridge dangerous and impassable; against, etc. (Arch. 339.)

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2. *Same for breaking windows of a dwelling-house.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

the windows of a certain dwelling-house, the property of J. N., there situate, did break, by throwing stones at and against said windows; against, etc.

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3. *Same for firing a stack of hay.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain stack of hay, the property of J. N., then and there being, did burn and consume; against, etc.

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4. *Same for cutting down fruit trees.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain plum tree, the property of J. N., then and there growing, being a fruit tree, did cut and damage; against, etc.

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5. *Same for pulling down a gate.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain gate erected on the premises of J. N., there situate, did pull down; against, etc.

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6. *Same for pulling down piles of wood.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

certain piles of wood, the property of J. N., then and there being piled up, did pull down; against, etc.

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7. *Same for overturning a cart.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain cart, the property of J. N., then and there being, did overturn; against, etc.

8. *Same for running a cart into sloughs.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain cart, the property of J. N., then and there being, did run into a certain slough there being, to the damage of J. N.; against, etc.

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9. *Same for cutting loose, and setting a boat adrift.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain boat, the property of J. N., then and there being, and fastened to a stake on the bank of a creek there situate, did cut loose, and set adrift in said creek, to the damage of J. N.; against, etc.

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10. *Same for poisoning a horse.* (Id.)

(*Use No.* 1 *to* *, *and go on thus:*)

did administer to a certain horse, the property of J. N., then and there being, a large quantity, to wit, three drachms, of a certain poisonous substance called white arsenic, of which said poison, so unlawfully, wantonly and willfully administered by said J. S., the horse aforesaid died; against, etc.

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11. *Indictment for burning a rick of hay over value of* $25.

(Law of 1867, p. 158, § 1.)

(*Use No.* 1 *to* *, *and go on thus:*)

a certain rick of hay, the property of J. N., then and there being, of the value of fifty dollars, did set fire to, burn and consume; against, etc.

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12. *Injuring a jail. Indictment for.*

(R. S. 1845, ch. 30, § 157; Purp. 396; Seates, 402.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid,* a certain public jail, being the common jail of the county aforesaid, at C. aforesaid, in said county situate, the property of said county, of the value of three thousand dollars, did feloniously, willfully, wantonly and

maliciously, injure by breaking the windows thereof, by throwing stones at and against said windows, to the damage of said county of three hundred dollars; against, etc.

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13. *Indictment for firing prairies.*

(R. S. 1845, ch. 30, § 158; Purp. 396; Scates, 402.)

(*Use No.* 11 *to* *, *and go on thus:*)

unlawfully, willfully, and intentionally did set on fire, a certain prairie, there situate, and called (*here name it*), the said prairie being in an inhabited part of said county, and the said J. S. not being then the owner of any farm, plantation or inclosure, the aforesaid prairie adjoining, to the injury and damage of the citizens residing near the prairie aforesaid, and of the owner of said prairie; against, etc.

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14. *Indictment for injuring a tomb.*

(Laws of 1865, p. 105, § 1.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, the cemetery of and belonging to C. aforesaid, in the county aforesaid, there situate, feloniously, unlawfully, willfully and indecently did break open and enter a tomb therein, in which a certain human body, to wit, the body of one J. N., had lately before been interred, and then was, then and there feloniously and unlawfully did open, and from the dead body aforesaid, did feloniously, certain jewels, to wit, a diamond ring, of the value of three hundred dollars, remove and convey away, he, the said J. S., not having lawful authority so to do; against, etc.

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15. *Indictment for injuring canal embankment.*

(Laws of 1867, p. 88, § 28.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, at C. aforesaid, in the county aforesaid, a certain part of the embankment of the canal

there situate, under the charge of the canal commissioners appointed by an Act of the Legislature of the State of Illinois, entitled "An act for canal and river improvements," in force the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and sixty-seven, feloniously, unlawfully, and maliciously did cut through; against, etc.

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Section 12. Offenses Relative to Slaves, Servants, and Apprentices.

This head forms division 14 of the Criminal Code, sections 159–161; sections 159 and 160 are obsolete; section 161 is partly in force—that is, as to harboring minors and apprentices.

*Decisions*—under section 161, none.

*Limitation*—eighteen months. *Penalty*—fine twelve dollars and forfeiture of license. This offense may be of justice of the peace cognizance. (See Laws 1863, p. 54.)

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1. *Indictment for harboring a minor.*

(R. S. 1845, ch. 30, § 161; Purp. 397; Scates, 402.)

That J. S., late of C., in the county of C., on the first day of July, in the year of our Lord ——, and on divers days since, up to the day of finding this indictment, being the keeper of a public house at C. aforesaid, in the county aforesaid, did entertain at his house R. S., who is within the age of twenty-one years, and an apprentice to J. N., after having been cautioned to the contrary by the said J. N., in the presence of E. F., a credible witness, the said J. S. then and there knowing the said R. S. to be an apprentice; against, etc. (Cotton's Treatise, p. 112.)

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## PART III.

### Defendant's special pleas.

The usual special plea to the jurisdiction and replication thereto, the plea of wrong addition, and the plea of no addition are not given, the first may be the subject of motion (see Criminal Code, section 163), and the latter pleas being by same section rendered obsolete, the plea of misnomer is seldom pleaded.

1. *Plea of misnomer of the Christian name.*

And James Long, who is indicted by the name of George Long, in his own proper person cometh into court here, and having heard the said indictment read, saith that John Long is his name, and by that name he was always called and known, without this, that the said James Long now is or at any time hath hitherto been called or known by the name of George, as by the said indictment is supposed, and this the said James Long is ready to verify; wherefore he prayeth judgment of the said indictment, and that the same may be quashed, etc. (Arch. 110, top page.)

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2. *Replication to the above.*

And hereupon J. N., State's attorney, who prosecutes for said people in this behalf, saith that the said indictment, by reason of any thing by the said James Long in his said plea above alleged ought not to be quashed, because he saith that the said James Long, long before and at the time of the preferring of the said indictment was, and still is known as well by the name of George Long as by the name of James Long, to wit, at C., aforesaid, in the county aforesaid; and this the said J. N. prays may be inquired of by the county, etc. (Arch. 111, top paging.)

(From the above plea, a plea of misnomer can be framed.)

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3. *Special plea — in bar.*

And the said J. S., in his own proper person, cometh into court here, and having heard the said indictment read, saith, that the said people, etc., ought not to further prosecute the said indictment against him, the said J. S., because he saith, that, etc., (*state the matter of the plea, and conclude thus:*) and this the said J. S. is ready to verify, wherefore he prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment above specified. (Arch. 105, top paging.)

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4. *Replication.*

And hereupon J. N., State's attorney, who prosecutes for the said people in this behalf, says, that by reason of any thing in

the said plea of the said J. S., above pleaded in bar, alleged, the said people, etc., ought not to be precluded from prosecuting the said indictment against the said J. S., because, he says that, etc. (*state the matter of the replication, and conclude thus:*) and this the said J. N., prays may be inquired of by the county (*or, if it conclude with a verification, thus:*) and this he, the said J. N., is ready to verify, whereupon he prays judgment, and that said J. S. may be convicted of the premises in the said indictment above specified.

Note.—If the replication conclude to the country, the similiter is then added thus: "*and the said* J. S., *doth the like*, and therefore let a jury come." If the replication conclude with a verification, the defendant must rejoin.

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5. *Rejoinder.*

And the said J. S., as to the said replication of the said J. N., to the said plea by him, the said J. S., saith, that the people, etc., by reason of any thing by the said J. N. in that replication alleged, ought not further to prosecute the said indictment against him, the said J. S., because, he saith, that, etc. (*here state the matter of the rejoinder, and conclude thus:*) and of this the said J. S. puts himself upon the country, etc. (*or, if it be necessary to conclude with a verification, the conclusion may be in the same form as in a plea*). (Arch. 87, top paging.)

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6. *Plea of autrefois acquit.*

And the said J. S., in his own proper person cometh into court here, and having heard the said indictment read, saith that the people, etc., ought not further to prosecute the said indictment against him, the said J. S., because he saith, that heretofore, to wit, at the (*here set forth the caption of the court verbatim*), it was presented, that the said J. S. (then and there being described as J. S., late of ———, in the county aforesaid), on the third day of (*continue the indictment to the end in the past tense, and go on thus:*) as by the record thereof more fully and at large appears, which judgment still remains in full force and effect, and not in the least reversed or made void; and the said J. S. in fact saith,

that he, the said J. S., and the said J. S. so indicted and acquitted as last aforesaid, are one and the same person, and not other and different persons; and that the (*felony and larceny*), of which he, the said J. S., was so indicted and acquitted as aforesaid, and the (felony and larceny) of which he is now indicted, are one and the same (felony and larceny) and not other and different (felonies and larcenies); and this he, the said J. S., is ready to verify, whereupon he prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the present indictment above specified. (Arch. 89, top paging.)

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*7. Plea of autrefois convict.*

And the said J. S., in his own proper person cometh into court here, and having heard the indictment read, saith, that the said people, etc., ought not further to prosecute the said indictment against him, the said J. S., in respect of the offense in the said indictment mentioned, because, he saith that heretofore, to wit, at the Circuit Court in and for the county aforesaid, begun and holden at, etc. (*here set out the former judgment and conviction verbatim in the past tense, and go on thus:*) as by the record thereof in the said court remaining, more fully and at large appears, which said judgment and conviction still remain in full force and effect, and not in the least reversed or made void; and the said J. S. so indicted and convicted, are one and the same person, and not other or different; and the said J. S. further saith, that the (felony and larceny, *or other offense*), of which the said J. S. was so indicted and convicted as aforesaid, and the (felony and larceny), for which he is now indicted, are one and the same (felony and larceny), and not other or different; and this he, the said J. S., is ready to verify; wherefore he prays judgment if the said people ought further to prosecute the said indictment against the said J. S., in respect of the said offense in the said indictment mentioned, and that he, the said J. S., may be dismissed and discharged from the same; and as to the felony and larceny aforesaid in the said indictment mentioned, the said J. S. saith, that he is not guilty thereof, and therefore he puts himself upon the country, etc. (Arch. 92, top paging.)

8. *Replication.*

And hereupon J. N., State's attorney, who prosecutes for the people, etc., in this behalf, says, that by reason of any thing in the said plea of the said J. S. above pleaded in bar alleged, the said people, etc., ought not to be precluded from prosecuting the said indictment against the said J. S., because he says that there is not any record of the said supposed conviction in manner and form as the said J. S. hath above in his said plea alleged; and this the said J. S. prays may be inquired of by the county, etc. (Arch. 92, top paging.)

# APPENDIX.

*No.* 1. *Indictment in the case of the Commonwealth* v. *Webster, for murder of Dr. Parkman.* (Bemis' Report, p. 1, 2, 3, 5; 5 Cush. p. 81, 295.)

This indictment contains four counts; the fourth count is the most important:

1. For murder by stabbing with a knife.
2. For same, by inflicting a blow on the head with a hammer.
3. For same, by striking, kicking, etc.
4. For same, in some way or manner, etc., unknown.

[This is a very celebrated case.]

*First count.*

The jurors, etc., upon their oath present, that John W. Webster, late of Cambridge, in the county of Middlesex, gentleman, on the twenty-third day of November, in the year of our Lord ——, at Boston, in the county of Suffolk, in and upon one George Parkman, feloniously, willfully and of his malice aforethought, did make an assault; and that the said John W. Webster, with a certain knife, the said George Parkman, in and upon the left side of the breast of the said George Parkman, then and there feloniously, willfully and of his malice aforethought, did strike, cut, stab, and thrust, giving to the said George Parkman, then and there with the knife aforesaid, in and upon the left side of the breast of the said George Parkman, one mortal wound, of the length of one inch, and of the depth of three inches; of which said mortal wound, the said George Parkman then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John W. Webster, the said George Parkman, in manner and form aforesaid, then and there feloniously, willfully, and of his malice aforethought, did kill and murder; against the peace of the commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

*Second count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John W. Webster, at Boston aforesaid, in the county aforesaid, on the twenty-third day of November, in the year of our Lord ——, in and upon the said George Parkman, feloniously, willfully, and of his malice aforethought, did make an assault; and that the said John W. Webster, then and there, with a certain hammer, the said George Parkman, in and upon the head of the said George Parkman, then and there feloniously, willfully, and of his malice aforethought, did strike, giving unto the said George Parkman, then and there with the hammer aforesaid, by the stroke aforesaid, in manner aforesaid, in and upon the head of the said George Parkman, one mortal wound, of which said mortal wound the said George Parkman then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John W. Webster, the said George Parkman, in manner and form aforesaid, then and there feloniously, willfully, and of his malice aforethought, did kill and murder; against the peace of said commonwealth, and contrary to the form of the statute in such case made and provided.

*Third count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John W. Webster, at Boston aforesaid, in the county aforesaid, on the twenty-third day of November, in the year of our Lord ——, in and upon the body of one George Parkman, feloniously, willfully and of his malice aforethought, did make an assault; and that the said John W. Webster, then and there, with his hands and feet, the said George Parkman, feloniously, willfully and of his malice aforethought did strike, beat and kick in and upon the head, breast, back, belly, sides and other parts of the body of the said George Parkman; and did then and there feloniously, willfully and of his malice aforethought, cast and throw the said George Parkman down, unto, and upon the floor, with great force and violence there, giving unto the said George Parkman then and there, as well by beating, striking and kicking of the said George Parkman, in manner and form aforesaid, as by the casting and throwing

of the said George Parkman down, as aforesaid, several mortal strokes, wounds and bruises, in and upon the head, breast, back, belly, sides and other parts of the body of the said George Parkman, of which said mortal strokes, wounds and bruises the said George Parkman then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said John W. Webster, the said George Parkman, in manner and form aforesaid, then and there feloniously, willfully and of his malice aforethought, did kill and murder; against the peace of said commonwealth, and contrary to the form of the statute in such case made and provided.

*Fourth count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John W. Webster, at Boston aforesaid, in the county aforesaid, in a certain building known as the Medical College, there situate, on the twenty-third day of November, in the year of our Lord ——, in and upon one George Parkman, feloniously, willfully and of his malice aforethought, did make an assault; and the said George Parkman, in some way and manner, and by some means, instruments and weapons, to the jurors unknown, did then and there feloniously, willfully and of his malice aforethought, deprive of life, so that the said George Parkman, then and there died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John W. Webster, the said George Parkman, in the manner and by the means aforesaid, to the said jurors unknown, then and there feloniously, willfully and of his malice aforethought, did kill and murder; against the peace of the commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

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*No. 2. Indictment for threatening by letter to accuse of a crime.*

The jurors, etc., upon their oath present, that C. D., late of F., in the county of M., laborer, on the first day of June, in the year of our Lord ——, at F., in the county of M., feloniously, knowingly, willfully, and maliciously did threaten one E. F., to accuse the said E. F., of having committed the crime

of (*here set forth the crime*),[1] by then and there feloniously, knowingly, willfully, and maliciously sending to the said E. F. a certain written communication, which said written communication is of the following tenor, that is to say (*here set out the letter correctly*),[2] with intent thereby, then and there feloniously, knowingly, willfully and maliciously to extort money from the said E. F.; against the peace of said commonwealth, and contrary to the form of the statute in such case made and provided.

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*No.* 3. *For sending a letter threatening to burn a dwelling-house.*

The jurors, etc., upon their oath present, that C. D., late of F., in the county of M., laborer, on the first day of June, in the year of our Lord ——, at F., in the county of M., feloniously, knowingly, willfully and maliciously did threaten one E. F. to burn and destroy a certain dwelling house, of the property of the said E. F., there situate, by then and there feloniously, knowingly, willfully and maliciously sending to the said E. F. a certain written communication, which said written communication is of the following tenor, that is to say, etc., with intent thereby then and there feloniously, knowingly, willfully and maliciously to extort money from the said E. F.; against the peace of said commonwealth, and contrary to the form of the statute in such case made and provided.

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*No.* 4. *For sending a threatening letter.*

The jurors, etc., upon their oath present, that W. B., late of B., in the country of Surrey, laborer, on the first day of March, in the year of our Lord ——, with force and arms at B. aforesaid, in the county aforesaid, knowingly and feloniously did send to one J. H., a certain letter, directed to the said J. H., by the name and description of Mr. H. esquire, accusing the said J. H. of having committed a certain crime punishable by law with death, to wit, the abominable crime of buggery, with the said W. B., with a view and intent thereby then and there

[1] The crime need not be technically described. *Rex* v. *Tucker*, 1 Moo. C. C. 134.

[2] Set out the letter correctly. *Rex* v. *Loyd*, 2 East P. C. 1123.

to extort and gain money from the said J. H., which said letter is as follows, that is to say: "Sir, I write to inform you, that you have been very unkind, trying to your extreme energies to reflect disparagement on my reputation; in retaliation, I shall make known those liberties and diabolical actions you took with me when I was bathing you in your room, what I term sodomiting; some compensation I wish to receive from your hands, in one way or another; I am waiting for an answer at the bottom of Stockwell lane. Obedient servant, but injured W. B.;" contrary to the form of the statute in such case made and provided, and against the peace, etc. (2 Cox C. C. App. p. 11.)

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*No. 5. Indictment for fraudulent conveyance.*

The above relates to section 151, of the Criminal Code. This indictment is under statute 13 Eliz. ch. 5, § 3, which is a civil statute, but is under this indictment, taken in a criminal aspect in view of the common law doctrine against frauds and cheats. In its form as a civil statute it may be found substantially in R. S. 1845, p. 258; Purp. 585; Scates, 393; as a criminal statute it is found in R. S. 1845, ch. 30, § 151, clause 1; Purp. 393. This indictment is the only form in the books under the statute 13 Eliz. ch. 5, § 3. It was used in *Regina* v. *Smith et al.*, 6 Cox C. C. 31. These Reports are difficult to procure in America, hence its publication herein. For any offense within 13 Eliz. ch. 5, § 3, the offender may be indicted. In such indictment it is not necessary to set out the specific facts constituting the fraud.

In this case the defendants were charged upon indictment under 13 Eliz. ch. 5, § 3, for making a fraudulent conveyance.

Surrey, to wit:

The jurors, for our lady, the Queen, upon their oath present, that, heretofore and before the committing of the offense hereinafter next mentioned, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and fifty, and on divers other days and times heretofore, William Smith, hereinafter mentioned, had committed and caused to be committed near to, and in the neighborhood of certain, to wit,

twenty-two messuages, of and belonging to one T. C. M., to wit, at West Hill Grove, in the parish of Battersea, in the county of Surrey, divers nuisances and injurious acts, matters and things, to the great damage and injury of the said T. C. M., to wit, the amount of £300 and upward, wherefore the said T. C. M., heretofore, to wit, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and fifty-one, did commence a certain action on the case against the said W. S., to wit, in the court of our lady the Queen, before the Queen herself, whereby to recover from the said W. S. the lawful damages sustained by the said T. C. M. for and in respect of the said nuisances and injurious acts, matters and things aforesaid.

That thereupon such proceedings were had and taken in the said action, that afterward, to wit, at the assizes holden at Kingston on Thames, in and for the county of Surrey aforesaid, the said action came on to be tried, and then and there, before the Right Honorable JOHN LORD CAMPBELL and the Right Honorable Sir JAMES PARKE, then and there being her Majesty's justices assigned to take the assizes in and for the said county, was by a certain jury of the country in due form of law tried, upon which said trial the said jury did find and say upon their oath, that the said W. S. was guilty of the grievances, nuisances and injurious acts, matters and things aforesaid, and assessed the damages of the said T. C. M. on occasion thereof over and above his costs and charges by him about his said suit in that behalf expended, to £300, and assessed those costs and charges at forty shillings.

That during the pendency of the said suit, to wit, from the commencement of the said suit until the twenty-eighth day of March, in the year of our Lord 1851, the said W. S. was seized in his demense as of fee of and in certain lands, hereditaments and premises within said county, to wit, at the parish of Battersea, in the county of Surrey.*

That the said W. S., late of the parish of Wandsworth, in the county aforesaid, laborer, and S. Everett, late of the same place, laborer, devising and wickedly intending and contriving to injure, prejudice and aggrieve the said T. C. M., and to defraud and deprive him of any damages and costs to be recov-

ered in the said action while the same was so pending as aforesaid, and immediately before the same came on for trial as aforesaid, and in anticipation of the said verdict, to wit, on the day and year last aforesaid, at the parish last aforesaid, in the county aforesaid, did devise, contrive and prepare, and cause to be prepared, a certain feigned, covinous and fraudulent alienation and conveyance whereby the said W. S. expressed and declared to appoint and grant to the said S. E. the lands, tenements and hereditaments aforesaid, to hold to him, the said S. E., and his heirs for ever.

That the said W. S. and S. E., wickedly and fraudulently devising, contriving and intending as aforesaid, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, knowingly, willfully, fraudulently covinously and injuriously did execute and become parties to the said alienation and conveyance, and then and there wittingly and willfully did put in ure, avow, maintain, justify and defend the said alienation and conveyance as true, simple and done and made *bona fide* and upon good consideration, and as a conveyance and alienation whereby the said W. S. had really and *bona fide* appointed and granted to the said S. E. the lands, tenements and hereditaments aforesaid, to hold to him the said S. E. and his heirs forever; *whereas*, in truth† and in fact, the said alienation and conveyance was not nor is it *bona fide;* and, whereas, the truth was and is, that the same was so devised, contrived and executed as aforesaid, of malice, fraud, collusion and guile, and to the end, purpose and intent to delay and hinder the said T. C. M. of and in his said just and lawful action and the said damages by reason of the premises; to the great let and hindrance of the due course and execution of law and justice, to the great injury of the said T. C. M., against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity.

*Second count, as in the first count to the asterisk* (*), *and continue thus:*

That the said W. S. and S. E., devising and wickedly intending and contriving to injure, prejudice and aggrieve the said T. C. M., and to defraud and deprive him of any damages and

costs to be recovered in the said action while the same was so pending as aforesaid, and immediately before the same came on for trial as aforesaid, and in anticipation of the said verdict, to wit, on the day and year last aforesaid, at the parish of Wandsworth, in the county aforesaid, did devise, contrive and prepare and cause to be prepared, a fraudulent alienation and conveyance of the lands, tenements and hereditaments aforesaid; that the said W. S. and S. E. wickedly and fraudulently devising, contriving and intending as aforesaid, on the day and year aforesaid, at the parish last aforesaid, in the county aforesaid, unlawfully, knowingly, willfully, fradulently, covinously and injuriously did execute and became parties to the said alienation and conveyance, and then and there wittingly and willingly did put in ure, avow, maintain, justify and defend the same alienation and conveyance, as true, simple and done and made *bona fide*, and upon good consideration, and as a conveyance and alienation, whereby the said W. S. had really and *bona fide aliened and conveyed* to the said S. E. the lands, tenements and hereditaments aforesaid, to hold to him, the said S. E., and his heirs forever; whereas, in truth, etc., *as in first count from the dagger* (†).

*Third count, as in the first count to the asterisk* (*).

That during the pendency of the said action and in anticipation of the said verdict, to wit, on the day and year last aforesaid, a certain feigned, covinous and fraudulent alienation and conveyance had been devised, contrived, prepared and executed by and between the said W. S. and the said S. E., whereby the said W. S. was expressed and declared to appoint and grant and make over to the said S. E. the lands, tenements and hereditaments aforesaid to the said S. E. and his heirs forever; that the said W. S. and S. E., wickedly devising, contriving and intending to injure, prejudice and aggrieve him, and to deprive him of the said damages and costs in the said action so found as aforesaid, afterward, to wit, on the 26th day of April, in the year of our Lord 1851, at the parish of Wandsworth, in the county aforesaid, unlawfully, wittingly and willingly did put in ure, avow, maintain, justify and defend the same alienation and conveyance, as true, simple and done and made *bona fide*

and upon good consideration, and as a conveyance and alienation, whereby the said W. S. had really and *bona fide* appointed, granted and made over to the said S. E., the lands, tenements and hereditaments aforesaid, to hold to him, the said S. E., and his heirs forever, whereas in truth and in fact (etc., *as in last count at end*).

*Fourth count, as in the first count to the asterisk* (*).

That during the pending of the said action and in anticipation of the said verdict, to wit, on the day and year last aforesaid, a certain feigned, covinous and fraudulent alienation and conveyance had been devised, contrived, prepared and executed by and between the said W. S. and the said S. E. of the lands, tenements and hereditaments aforesaid to the said S. E. and his heirs forever; that the said W. S. and S. E. wickedly devising, contriving and intending to injure, prejudice and aggrieve the said T. C. M., and defraud and deprive him of the said damages and costs in the said action so found as aforesaid, afterward, to wit, on the twenty-sixth day of April, in the year of our Lord 1851, at the parish of Wandsworth aforesaid, in the county aforesaid, unlawfully, wittingly and willingly did put in ure, avow, maintain, justify and defend the same alienation and conveyance, as true, simple and done and made *bona fide* and upon good consideration, and as a conveyance and alienation whereby the said W. S. had really and *bona fide* granted, bargained, aliened, released, conveyed and made over to the said S. E. the lands, tenements and hereditaments aforesaid, to hold to him the said S. E. and his heirs forever, etc.

*Fifth count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. S. and the said S. E. and divers evil-disposed persons wickedly intending to injure the said T. C. M. on the twenty-eighth day of March, in the year of our Lord 1851, with force and arms, at the parish of Wandsworth, in the county aforesaid, did amongst themselves conspire, combine, confederate and agree together fraudulently, maliciously and covinously to delay, hinder and defraud the said T. C. M. of all such damages which he might thereafter recover against

the said W. S. in a certain action which was then pending in the court of our said lady the Queen, before the Queen herself, wherein the said T. C. M. was plaintiff and the said W. S. was defendant, to the evil example of all others in the like case offending; against the peace of our said lady the Queen, her crown and dignity.

*Sixth count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. S. and the said S. E., and divers evil-disposed persons, wickedly intending to injure the said T. C. M., on the twenty-eighth day of March, in the year of our Lord 1851, with force and arms, at the parish of Wandsworth, in the county aforesaid, did amongst themselves conspire, combine, confederate, and agree together, fraudulently, maliciously, and covinously to delay, hinder, and defraud the creditors of the said W. S., to the evil example of all others in the like case offending; against the peace of our lady the Queen, her crown and dignity.

*Seventh count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. S. and the said S. E., and divers evil-disposed persons, wickedly intending to injure the said T. C. M., on the twenty-eighth day of March, in the year of our Lord 1851, with force and arms, at the parish of Wandsworth, in the county aforesaid, did amongst themselves conspire, combine, confederate, and agree together, fraudulently, maliciously and covinously to cheat and defraud the said T. C. M. of the fruits, and of all benefit and advantages of any execution or execution which might thereafter lawfully issue or cause to be issued against the lands or tenements of the said W. S., to the evil example of all others in the like case offending; against the peace of our lady the Queen, her crown and dignity.

*Eighth count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. S. and the said S. E., and divers evil disposed persons, wickedly intending to injure the said T. C. M., on the twenty-eighth day of March, in the year of

our Lord 1851, with force and arms, at the parish of Wandsworth, in the county aforesaid, did amongst themselves conspire, combine, confederate and agree together, fraudulently, maliciously and covinously to cheat, injure, impoverish, prejudice and defraud the said T. C. M., to the evil example of all others in the like case offending, etc.

*Ninth count.*

And the jurors aforesaid, upon their oath aforesaid, do further present, that heretofore and before, and at the time of the commission of the offense hereinafter next mentioned, to wit, on the twenty-eighth day of March, in the year of our Lord 1851, a certain action on the case was pending between the said W. S. and the said T. C. M., to wit, in her Majesty's Court of Queen's Bench, at Westminster, whereby the said T. C. M. sought to recover from the said W. S. damages for certain nuisances and injurious acts, matters and things alleged to have been done and committed to the injury of the said T. C. M.; that the said W. S. and S. E., and divers evil-disposed persons, while the said action was so pending as aforesaid, to wit, on the day and year aforesaid, at the parish last aforesaid, in the county aforesaid, unlawfully and wickedly did conspire, combine, confederate, and agree together, by divers unlawful, false, fraudulent, and indirect ways, means, devises, stratagems, and contrivances, to impede, hinder, prevent and delay the said T. C. M. in the said action, and in the prosecution thereof, and in the recovery of damages for the nuisances and injurious acts, matters and things aforesaid, to the great injury of the said T. C. M., against the form of the statute, in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity.

*Locke* (for the defense) moved, after verdict, in arrest of judgment, on the ground that no proceeding by indictment was contemplated by the statute. The third section was in these words: (*he cited the section at length. See No.* 8, *infra.*) The offense, if any, of which the defendants have been guilty, is entirely created by this statute, and the section, after stating what the offense is, declares that, for committing it, the offender

shall incur a penalty or forfeiture of one year's value, to be recovered by action. There is no mention whatever of indictment, but there is a reference to a civil proceeding. The rule with respect to the mode of proceeding where new offenses are created by statute is laid down in Russell on Crimes, p. 50, as follows: (*he cited the passage. See No.* 9, *infra.*) There is another objection to the indictment, that it only states generally that this deed was fraudulent, not stating why or in what respect it was so. *In re Peck*, 9 A. & E. 686, it was held that a count charging that the defendant unlawfully conspired to defraud divers persons who should bargain with them for the sale of merchandise, of great quantities of such merchandise without paying for the same, with intent to obtain to themselves money and other profit, was bad for not showing by what means the parties were to be defrauded.

MAULE, J.—As to the *first* point, that the section of the act does not speak of indictment: I think it clear that that proceeding is the proper one. The section mentions the offense, and then with reference to the punishment declares that the "offender being thereof convicted, shall suffer imprisonment for one-half year." That must mean "being convicted thereof" before some competent tribunal. If the statute had pointed out some other means, for instance, on conviction before a justice of the peace on a summary hearing, it would probably have restricted proceedings to that particular course. It is true that the statute does mention a civil action, but that has nothing to do with the half year's imprisonment, but merely has reference to the recovery of damages by action, in any of the courts at Westminster. It surely never could be contended, that the statute means that when such court shall give judgment for damages it would proceed to award to defendant the punishment of half year's imprisonment. The humanity of our law has established a clear distinction between civil and criminal proceedings, and this statute cannot be supposed to sanction so anomalous a course as that. It is plain that, by some means or another, imprisonment is to be awarded after a proper conviction before a recognized tribunal. How then can that be done otherwise than by indictment?

*Locke* submitted, that, at all events, it was intended that no criminal proceeding should be resorted to until after recovery of damages in a civil action; the words "and also" near end of section, seemed to point to such a conclusion.

Maule, J.—I do not think so; these words do not necessarily so restrict the procedure, and there seems to be no reason then why it should be so restricted. Then as to the *second* point. The case cited is one where persons were said to have conspired to do a thing not necessarily unlawful in itself, such as for instance: preventing a person from having execution of a judgment. There is nothing unlawful in that, it is precisely what counsel is now doing, seeking to prevent the operation of a judgment by arresting it. In this present case the very words of the statute are adopted. What is charged, therefore, is necessarily unlawful, for the statute has made it so.

*Judgment for the Crown.*

Note.—The above indictment was drawn after great consideration by the Deputy Clerk of Assize on the Home Circuit, and is believed to be the only instance of an attempt to make this section the basis of a criminal prosecution, a fact very singular, considering the extensive nature of its operation. The facts appear fully enough in the indictment itself.

*No.* 6. *Plea of autrefois acquit.*

This plea, drawn by the learned Mr. Kingdon, is in *Regina* v. *Bird*, 6 Cox C. C. 12, to the indictment in that case, which indictment is for murder by *inter alia*, a series of beatings, and has six counts.

And the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, in their own proper persons, now come into court here, and having heard the said indictment read and the matters therein contained, say that they ought not to be put to answer the said indictment, they having been heretofore, in due manner of law, acquitted of the premises in and by the said indictment above specified and charged upon them; and for plea to the said indictment they say, that the said Commonwealth ought not further to prosecute the said indictment against them, because they say that heretofore, to wit, at the (*here set forth the caption of the court verbatim*), the said Robert Courtice Bird and the said Sarah,

the said wife of the said Robert Courtice Bird, stood indicted, and were duly arraigned upon a certain indictment, which charged the said Robert Courtice Bird and the said Sarah, the said wife of the said Robert Courtice Bird, by the name and description of Robert Courtice Bird, late of the parish of Buckland Brewer, in the county of Devon, laborer, and Sarah, the wife of the said Robert Courtice Bird, late of the same parish, for that the said Robert Courtice Bird and the said Sarah, the said wife of the said Robert Courtice Bird, etc. (*setting out the indictment in full*); and the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, further say, that the said felony and murder so charged upon them in the said last mentioned indictment as aforesaid, included divers assaults therein supposed and alleged to have been made and committed by the said Robert Courtice Bird, and the said Sarah, the wife of the said Robert Courtice Bird, against the person of the said Mary Ann Parsons in the said indictment named; and the said Robert Courtice Bird, and the said Sarah, the wife of the said Robert Courtice Bird, further say, that they did then and there respectively plead not guilty to the said last mentioned indictment, and that they were thereupon then and there, in due form of law, respectively tried upon the said last mentioned indictment, by a jury of the said county, then and there in due form of law summoned, impaneled, and sworn to speak the truth of, and concerning the premises in the said last mentioned indictment mentioned, and to try the said issues so joined between our sovereign lady the Queen, and the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, respectively as aforesaid, and which said jury, upon their oaths did then and there say, that the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, respectively, were not guilty of the premises in the said last mentioned indictment specified and charged on them respectively as aforesaid, as the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, by their pleas to the said last mentioned indictment respectively alleged, whereupon it was then and there considered, by the said last mentioned court, that the said Robert Courtice Bird,

and the said Sarah, the said wife of the said Robert Courtice Bird, of the premises aforesaid, in the said last mentioned indictment, specified and charged on them respectively as aforesaid, should be discharged and go acquitted thereof without day, as by the record of the said proceeding now here appears; and the said Robert Courtice Bird and the said Sarah, the said wife of the said Robert Courtice Bird, further say, that the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, now here pleading, and the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, in the indictment aforesaid named, and thereof acquitted as aforesaid, are respectively the same identical persons respectively, and not other or different persons respectively, and that the said Mary Ann Parsons, in the said last mentioned indictment named, is the same identical Mary Ann Parsons as is named in the indictment to which the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, are now here pleading; and that the said assaults so included in the said felony, and murder so charged upon the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, are now here pleading; and that the said assaults so included in the said felony and murder so charged upon them, the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, in the said indictment in this plea mentioned in this behalf, and therein supposed and alleged to have been made and committed by them against the person of the said Mary Ann Parsons as aforesaid, are the same identical assaults, beatings, ill-treatings and woundings respectively, as in the said indictment to which the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird are now here pleading, are respectively supposed and alleged to have been made, done, given, and committed respectively, by the said Robert Courtice Bird, and the said Sarah, the said wife of the said Robert Courtice Bird, respectively, and not other or different; wherefore they pray judgment of the court here, whether the said Commonwealth will or ought further to prosecute, impeach, or charge them, on account of the premises in the said indictment, to which they are now

here pleading, contained and specified, and whether they ought to answer thereto respectively, and that they may be dismissed this court without delay.

The indictment under which the foregoing plea was framed, is one of great value, and not easily gotten in America. The above plea is incomplete without it, it is therefore here inserted as No. 7, as follows:

*No. 7. Indictment for murder by inter alia, a series of beatings.* (*Regina* v. *Bird*, 5 Cox C. C. 1, also 1 Temple and 1 Moo. C. C. 438, note, and 2 Eng. L. and Eq. 428.)

The jurors, etc., upon their oath present, that Robert Courtice Bird, late of the parish of Buckland Brewer, in the county of Devon, laborer, and Sarah, the wife of the said Robert Courtice Bird, late of the same parish, on the fifth day of November, in the year of our Lord ——, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one Mary Ann Parsons, unlawfully, feloniously, willfully, and of their malice aforethought, did make an assault, and that the said Robert Courtice Bird and Sarah his wife, with a certain stick, the said Mary Ann Parsons in and upon the head, chest, shoulders, back, arms, legs and thighs of the said Mary Ann Parsons, then and there feloniously, willfully, and of their malice aforethought, did strike and beat the said Robert Courtice Bird and Sarah his wife, giving to the said Mary Ann Parsons then and there, thereby, to wit, with the stick aforesaid, in and upon the head, chest, shoulders, back, arms, legs and thighs of the said Mary Ann Parsons divers mortal bruises, of which said mortal bruises the said Mary Ann Parsons, from the said fifth day of November, in the year aforesaid, until the fourth day of January, in the year of our Lord ——, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said fourth day of January, in the year last aforesaid, the said Mary Ann Parsons at the parish aforesaid, in the county aforesaid, of the said mortal bruises died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said Robert Courtice Bird and Sarah his wife, the said Mary Ann Parsons, in manner and form aforesaid, feloniously, willfully, unlawfully and of their malice aforethought, did kill and murder; against, etc.

*Second count.* — And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Robert Courtice Bird, late of the parish of Buckland Brewer, in the county of Devon, and Sarah his wife, late of the same parish, on the fifth day of November, in the year of our Lord ——, and on divers other days and times between that day and the third day of January, in the year of our Lord ——, to wit, on the first day of December, in the year of our Lord ——, and the first day of January, in the year of our Lord ——, respectively, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one Mary Ann Parsons, feloniously, willfully and of their malice aforethought, did make divers, to wit, ten assaults; and that the said Robert Courtice Bird and Sarah his wife, with a certain stick, the said Mary Ann Parsons, in and upon the head, chest, shoulders, arms, legs and thighs of the said Mary Ann Parsons, then and there, to wit, at the several times aforesaid, at the parish aforesaid, in the county aforesaid, feloniously, willfully, wickedly and of their malice aforethought, did strike and beat, the said Robert Courtice Bird and Sarah his wife, to the said Mary Ann Parsons then and there, thereby, to wit, with the said stick, at the several times aforesaid, at the parish aforesaid, in the county aforesaid, giving to the said Mary Ann Parsons in and upon the head, chest, shoulders, arms, legs and thighs of the said Mary Ann Parsons, divers, to wit, ten mortal bruises, of which said mortal bruises the said Mary Ann Parsons, from the said fifth day of November, in the year aforesaid, and the several other days aforesaid, until the fourth day of January, in the year of our Lord ——, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said fourth day of January, in the year last aforesaid, the said Mary Ann Parsons, at the parish aforesaid, in the county aforesaid, of the said mortal bruises died; and so the jurors aforesaid, on their oath aforesaid, do say, that the said Robert Courtice Bird and Sarah his wife, the said Mary Ann Parsons, in manner and form aforesaid, feloniously, willfully and of their malice aforethought, did kill and murder; against the peace, etc.

*Third count.* — And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Robert Courtice

Bird and Sarah his wife, on the fifth day of November, in the year of our Lord ——, and on divers other days and times between that day and the third day of January, in the year of our Lord ——, * to wit, on the first day of December, in the year of our Lord ——, and the first day of January, in the year of our Lord ——, respectively, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one Mary Ann Parsons, feloniously, willfully and of their malice aforethought, did make divers, to wit, ten assaults; and that the said Robert Courtiee Bird with a certain stick, and the said Sarah, the wife of the said Robert Courtiee Bird, with a certain other stick, the said Mary Ann Parsons in and upon the head, chest, shoulders, arms, legs and thighs of the said Mary Ann Parsons then and there, to wit, at the several times aforesaid, at the parish aforesaid, and county aforesaid, feloniously, willfully and of their malice aforethought, did respectively strike and beat, the said Robert Courtice Bird, and Sarah, his wife, respectively, to the said Mary Ann Parsons then and there, thereby, to wit, at the several times aforesaid, at the parish aforesaid, in the county aforesaid, giving with this, that they respectively then and thereby gave to the said Mary Ann Parsons in and upon the head, chest, shoulders, arms, legs and thighs of the said Mary Ann Parsons, divers, to wit, ten mortal bruises, of which said mortal bruises the said Mary Ann Parsons, from the said fifth day of November, in the year of our Lord aforesaid, and the several other days aforesaid, until the fourth day of January, in the year of our Lord ——, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said fourth day of January, in the year last aforesaid, the said Mary Ann Parsons, at the parish aforesaid, and county aforesaid, of the said mortal bruises so given as aforesaid, died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said Robert Courtice Bird and Sarah his wife, the said Mary Ann Parsons, in manner and form aforesaid, by the means aforesaid, feloniously, willfully and of their malice aforethought, did kill and murder; against the peace, etc.

*Fourth count.* — (*Use third count to * and go on thus:*) with force and arms, at the parish aforesaid, in the county aforesaid,

in and upon the said Mary Ann Parsons, feloniously, willfully and of their malice aforethought, did make divers assaults; and that the said Robert Courtice Bird and Sarah his wife, with a certain scourge, to wit, a scourge made of certain leather thongs, to a certain stick affixed, the said Mary Ann Parsons in and upon the head, chest, shoulders, back, arms, legs and thighs of the said Mary Ann Parsons, then and there feloniously, willfully, and of their malice aforethought, did strike and beat, the said Robert Courtice Bird, and Sarah his wife, giving to the said Mary Ann Parsons, then and there, thereby, to wit, with the scourge aforesaid, at the several times aforesaid, at the parish aforesaid, in the county aforesaid, in and upon the head, chest, shoulders, back, arms, legs and thighs of the said Mary Ann Parsons, divers mortal bruises, of which said mortal bruises the said Mary Ann Parsons, from the said fifth day of November, and the said other days and times, until the said fourth day of January, in the year of our Lord ——, aforesaid, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said fourth day of January, in the year last aforesaid, the said Mary Ann Parsons, at the parish aforesaid, in the county aforesaid, of the said several mortal bruises died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Robert Courtice Bird, and Sarah his wife, the said Mary Ann Parsons, in manner and form aforesaid, by the means aforesaid, feloniously, willfully, and of their malice aforethought, did kill and murder; against, the peace, etc.

*Fifth count.*—And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Robert Courtice Bird and Sarah his wife, on the first day of January, in the year of our Lord ——, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said Mary Ann Parsons feloniously, willfully, and of their malice aforethought, did make an assault; and that the said Robert Courtice Bird, with both his hands, * and the said Sarah Bird, with both her hands, the said Mary Ann Parsons to and against the ground, then and there feloniously, willfully, and of their malice aforethought, did cast and throw, by which said casting and throwing the said Mary Ann Parsons to and against the ground, the

said Robert Courtice Bird and Sarah Bird then and there gave the said Mary Ann Parsons divers mortal bruises in and upon the head, stomach, sides and back of the said Mary Ann Parsons, of which said mortal bruises the said Mary Ann Parsons, from the said first day of January, in the year of our Lord ——, to wit, then and there, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said fourth day of January, in the year last aforesaid, the said Mary Ann Parsons, at the parish aforesaid, in the county aforesaid, of the said mortal bruises died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Robert Courtice Bird and Sarah his wife, the said Mary Ann Parsons, in manner and form aforesaid, by the means aforesaid, feloniously, willfully, and of their malice aforethought did kill and murder; against the peace, etc.

*Sixth count.*—(*Use fifth count to *, and go on thus:*) and the said Sarah, the wife of the said Robert Courtice Bird, then and there, with both her hands, the said Mary Ann Parsons to and against the ground then and there feloniously, willfully, and of their malice aforethought, respectively, did then and there cast and throw, and that the said Robert Courtice Bird then and there, with both the feet of the said Robert Courtice Bird, and the said Sarah, the wife of the said Robert Courtice Bird, then and there, with both the feet of the said Sarah, while the said Mary Ann Parsons being so then and there cast and thrown to and against the ground, then was then and there upon the ground, the said Mary Ann Parsons, then and there feloniously, willfully, and of their malice aforethought, did respectively then and there strike, beat and kick, the said Robert Courtice Bird, and Sarah his wife, then and there respectively, as well by the casting and throwing of the said Mary Ann Parsons to the ground as aforesaid, as also by the striking, beating and kicking the said Mary Ann Parsons in and upon the head, stomach, back and sides of the said Mary Ann Parsons, in manner and form aforesaid, while on the ground as aforesaid, then and there thereby giving to the said Mary Ann Parsons divers, to wit, twenty mortal bruises in and upon the head, stomach, back and sides of the said Mary Ann Parsons, of which said mortal bruises so caused as aforesaid, the said

Mary Ann Parsons, from the said first day of January, in the year of our Lord ——, until the fourth day of January, in the year of our Lord ——, then and there, to wit, at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said fourth day of January, in the year last aforesaid, the said Mary Ann Parsons, at the parish and in the county aforesaid, of the said mortal bruises so given as aforesaid, died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Robert Courtice Bird and Sarah his wife, the said Mary Ann Parsons, in manner and form aforesaid, by the means aforesaid, feloniously, willfully and of their malice aforethought, did kill and murder; against the peace, etc.

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*No.* 8. *Section* 3, *chapter* 5, *Statute* 13 *Eliz.*, *omitted in No.* 5 *above.*

"That all and every the parties to such feigned, covinous or frudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, and other things before expressed, and being privy and knowing of the same or any of them, which at any time after the tenth day of June next coming, shall wittingly and willingly put in use, avow, maintain, justify or defend the same or any of them, as true, simple, and done, had, or made *bona fide*, and upon good consideration; or shall alien or assign any of the lands, tenements, goods, leases, or other things before mentioned, to him or them conveyed as is aforesaid, or any part thereof, shall incur the penalty or forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons, or other profits, of or out of the same, and the whole value of the said goods and chattels, and also of so much moneys as are or shall be contained in any such covinous and feigned bond, the one moiety whereof to be to the Queen's Majesty, her heirs and successors, and the other moiety to the party or parties grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid, to be recovered in any of the Queen's courts of record by

action of debt, bill, plaint, or information, wherein no essoin, protection or wager of law shall be admitted to the defendant or defendants, and also being thereof lawfully convicted, shall suffer imprisonment for one half year, without bail or mainprize."

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*No.* 9. *Citation from Russell on Crimes, p.* 50, *by Mr. Locke, in Regina* v. *Smith, above given, No.* 5, *and there omitted.*

"Where an offense was punishable by a common law proceeding before the passing of a statute which prescribes a particular remedy by a summary proceeding, then either method may be pursued, as the particular remedy is cumulative, and does not exclude the common law punishment. But where a statute creates a new offense by prohibiting and making unlawful what was lawful before, and appoints a particular remedy against such new offense by a particular sanction and particular method of proceeding, such method must be pursued and no other. The mention of other methods of proceeding impliedly excludes that by indictment, unless such methods are given by a separate and substantive clause."

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*No.* 10. *Indictment for threatening to accuse of an infamous crime.* (*Regina* v. *Tiddeman*, 4 Cox C. C. 387.)

The jurors upon their oath present, that H. T., late of B., in the county of M., and within the jurisdiction of the Central Criminal Court, laborer; W. L., late of the same place, laborer; J. B., late of the same place, laborer; J. J. late of the same place, laborer, otherwise called John Joyce, and J. S., late of the same place, laborer; on the second day of March, in the year of our Lord ——, at B. aforesaid, in the county aforesaid, and within the jurisdiction of the said court, feloniously did threaten one S. W., to accuse the said S. W. of having committed the abominable crime of buggery with the said H. T., with a view and with the intent in so doing then and there and thereby to extort and gain from the said S. W. a certain valuable security for the payment of money, to wit, a security for the payment of the sum of fifty dollars; contrary, etc., and against, etc.

*Second count.* — Alleged that the prisoners feloniously did accuse the said S. W. of having committed the abominable crime, etc., with the said H. T.

*Third count.* — That they feloniously did threaten the said S. W., to accuse the said S. W. of having attempted and endeavored to commit the abominable crime, etc., with the said H. T.

*Fourth count.* — That they did accuse the said S. W. of having attempted and endeavored to commit the abominable crime of buggery with the said H. T.

*Fifth count.* — That they feloniously did threaten the said S. W., to accuse the said S. W. of a certain infamous crime, that is to say, of having made to the said H. T., a certain solicitation, whereby to move and induce the said H. T., to commit with the said S. W., the abominable crime, etc.

*Sixth count.* — That they did accuse the said S. W., of a certain infamous crime, that is to say, of having made to the said H. T., a certain solicitation, whereby to move and induce the said H. T., to commit with the said S. W., the abominable crime, etc.

*Seventh count.* — That they did threaten the said S. W., to accuse the said S. W., of having committed the abominable crime, etc.

*Eighth count.* — That they did accuse the said S. W., of having committed the abominable crime, etc.

*Ninth count.* — That they did threaten the said S. W., to accuse the said S. W., of having attempted and endeavored to commit the abominable crime, etc.

*Tenth count.* — That they did accuse the said S. W., of having attempted and endeavored to commit the abominable crime, etc.

*Eleventh count.* — That they did threaten one S. W. to accuse the said S. W. of having committed the abominable crime, etc., with the said H. T., with a view and intent thereby to extort money from the said S. W.

(There were nine other counts, only varying from the first ten as the eleventh did in alleging the intent to be to extort money.)

There was no allegation in any count as to whose property the security or the money was.

NOTE. — In this case it was contended in arrest of judgment, that the indictment was defective for not alleging, that the security sought to be obtained was the property of the prosecutor. The court, PLATT, B., held, that it was not necessary to aver to whom the security belonged. *Rex* v. *Norton*, 8 C. & P. 186, does not conflict; that was under another statute, which required that the party charged should obtain the thing sought. The indictment in *Regina* v. *Tiddeman*, above given, is under 10 & 11 Vict. ch. 66, § 2, which makes it an offense to accuse or threaten to accuse, etc., with a view to extort or gain from such person any property, money or security; the crime is complete whether the property belongs to the party threatened or not.

The Illinois statute, section 111, Criminal Code, is similar to 10 & 11 Vict. above cited, and meets this case of *Regina* v. *Tiddeman*; hence, the indictment above applies to section 111, above.

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*No.* 11. *Practical suggestions on framing indictments, etc.*

These are intended to present the technical phrases in particular cases, and the technical words and phrases in the statutes. The order of the Code is followed.

1. The word "*feloniously*" is essential in all indictments for felonies.

2. The word "unlawfully," with the peculiar words in the statute, are usually put in all indictments for misdemeanors.

§ 14. *Accessories after the fact* — "well knowing the said —— to have done and committed the said felony, did afterward feloniously receive, comfort, harbor and maintain the said ——."

§ 20. *Treason* — "maliciously and traitorously did."

§ 21. *Misprision of treason* — "feloniously, unlawfully, maliciously and traitorously did conceal and keep secret."

§ 22. *Murder* — "feloniously of his malice aforethought."

§ 25. *Manslaughter* — omit "of his malice aforethought" and the word "murder."

§ 48. *Rape* — "against her will feloniously did ravish" the words "and carnally knew her" are usually added; their omission is not fatal, as "ravish" being used in the technical phrase, "violently and feloniously did assault," are usual but not necessary.

§ 50. *Crime against nature.* — In sodomy the word "buggery" is essential.

§ 58. *Arson* — "willfully, maliciously and feloniously." Under Law of 1869, p. 4, § 2, where it is sufficient of the building he occupied to allege it as the property of the owner, lessee or occupant, if unoccupied to allege the fact describing the building in general terms.

§ 60. *Burglary* — "feloniously and burglariously" did break and enter, where force is used; "did enter," where the door or window was open.

§ 61. *Robbery.* — The word "rob" is essential; the assault must be charged "feloniously."

§ 62. *Larceny* — "feloniously did steal, take and carry away." The value must be stated, except in larceny in railroad cars, p. 79 ante, and frauds by railroad companies, pp. 93 and 94 ante, which in several Circuit Courts held, not necessary to state.

§ 63. *Receiving stolen goods.* — The guilty knowledge is the *gist* of the offense, and must be charged thus: "knowing the same to have been stolen."

§ 66. *Embezzlement.* — The same words as in larceny, with allegations of the fiduciary relation and the fraudulent conversion.

§ 73. *Forgery* — "forged" is enough; "falsely" need not be prefixed; "intent to defraud" is necessary.

§ 82. *Perjury.* — Show, 1. That the oath was taken in a judicial proceeding. 2. Before a competent jurisdiction. 3. Was material to the point in issue. 4. Was taken by the defendant. 5. Its willful falsehood to be negatived as to the affirmative assertions, which is called assignments of perjury. Allege, "falsely, knowingly, wickedly, willfully and corruptly, did commit willful and corrupt perjury."

§ 84. *Bribery* — "unlawfully, wickedly and corruptly did."

§ 120. *Libel* — "of and concerning" are the technical words.

As to *cheats*, "unlawfully, knowingly and designedly did obtain."

In *misdemeanors* the language of the Code is the best to use.

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